

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 13, 2022

TO: All interested persons.

RE: Rohm and Haas Texas Incorporated
TPDES Permit No. WQ0000458000

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter are instructions to view the Executive Director's Response to Public Comment (RTC) on the Internet. Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov. A complete copy of the RTC (including the mailing list), complete application, draft permit and related documents, including public comments, are available for review at the TCEQ Central Office. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Deer Park Public Library, 3009 Center Street, Deer Park, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. The procedures for the commission's evaluation of hearing requests/requests for reconsideration are located in 30 Texas Administrative Code Chapter 55, Subchapter F. A brief description of the procedures for these two requests follows.

How to Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. Your hearing request must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (3) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: “I request a contested case hearing.”
- (4) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group;
 - (B) the comments on the application submitted by the group that are the basis of the hearing request; and
 - (C) by name and physical address one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization’s purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

Additionally, your request must demonstrate that you are an **“affected person.”** 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. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission’s decision on this application that were raised **by you** during the public comment period. The request cannot be based solely on issues raised in comments that you have withdrawn.

To facilitate the commission’s determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director’s responses to **your** comments that you dispute; 2) the factual basis of the dispute; and 3) list any disputed issues of law.

How to Request Reconsideration of the Executive Director’s Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director’s decision. A request for reconsideration should contain your name,

address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html or by mail to the following address:

Laurie Gharis, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the TCEQ's Alternative Dispute Resolution Program and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Public Education Program, toll free, at 1-800-687-4040.

Sincerely,



Laurie Gharis
Chief Clerk

LG/erg

Enclosure

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT
for
Rohm and Haas Texas Incorporated
TPDES Permit No. WQ0000458000

The Executive Director has made the Response to Public Comment (RTC) for the application by Rohm and Haas Texas Incorporated for TPDES Permit No. WQ0000458000 available for viewing on the Internet. You may view and print the document by visiting the TCEQ Commissioners' Integrated Database at the following link:

<https://www.tceq.texas.gov/goto/cid>

In order to view the RTC at the link above, enter the TCEQ ID Number for this application (WQ0000458000) and click the "Search" button. The search results will display a link to the RTC.

Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov.

Additional Information

For more information on the public participation process, you may contact the Office of the Public Interest Counsel at (512) 239-6363 or call the Public Education Program, toll free, at (800) 687-4040.

A complete copy of the RTC (including the mailing list), the complete application, the draft permit, and related documents, including comments, at the TCEQ Central Office in Austin, Texas. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Deer Park Public Library, 3009 Center Street, Deer Park, Texas.

MAILING LIST
for
Rohm and Haas Texas Incorporated
TPDES Permit No. WQ0000458000

FOR THE APPLICANT:

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The Dow Chemical Company
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Deer Park, Texas 77536

Gary Moore, Environmental Specialist
The Dow Chemical Company
P.O. Box 1000
Deer Park, Texas 77536

INTERESTED PERSONS:

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Bayou City Waterkeeper
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FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Ryan Vise, Deputy Director
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FOR PUBLIC INTEREST COUNSEL
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FOR THE CHIEF CLERK
via electronic mail:

Laurie Gharis, Chief Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

TPDES PERMIT NO. WQ0000458000

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

EXECUTIVE DIRECTOR’S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the Executive Director’s preliminary decision to approve Rohm and Haas Texas Incorporated’s (Applicant) application for a major amendment with renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0000458000. As required by 30 Texas Administrative Code (TAC) Section (§) 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk received a timely comment letter from Kristen Schlemmer on behalf of Bayou City Waterkeeper. This Response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

I. BACKGROUND

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.

The effluent limitations are established in the draft permit as follows:

Outfall	Pollutant	Draft Permit	
		Daily Avg lbs/day	Daily Max lbs/day
001	Flow, MGD	8.4	Report
	Biochemical Oxygen Demand, 5-Day (BOD ₅)	Report	Report
	Total Suspended Solids (TSS)	Report	Report
	Chemical Oxygen Demand (COD)	Report	Report
	Ammonia as Nitrogen (NH ₃ -N)	Report	Report
	Total Residual Chlorine	N/A	N/A
	Total Cyanide	Report	Report
	Free Cyanide	4.29	9.04
	Copper, total	9.68	22.6
	Nickel, total	11.3	26.6
	Zinc, total	120	254
	Acenaphthene	N/A	Report
	Acenaphthylene	N/A	Report
	Acrylonitrile	N/A	Report
	Anthracene	N/A	Report
	Benzene	N/A	Report
	Benzo(a)anthracene	N/A	0.1633
	Benzo(a)pyrene	N/A	0.0163
	3,4-Benzofluoranthene	N/A	Report
	Benzo(k)fluoranthene	N/A	Report
	Bis(2-Ethylhexyl) Phthalate	N/A	Report
	Carbon Tetrachloride	N/A	Report
	Chlorobenzene	N/A	Report
Chloroethane	N/A	Report	

Outfall	Pollutant	Draft Permit	
		Daily Avg	Daily Max
		lbs/day	lbs/day
001	Chloroform	N/A	Report
	2-Chlorophenol	N/A	Report
	Chrysene	N/A	Report
	Di-n-Butyl Phthalate	N/A	Report
	1,2-Dichlorobenzene	N/A	Report
	1,3-Dichlorobenzene	N/A	Report
	1,4-Dichlorobenzene	N/A	Report
	1,1-Dichloroethane	N/A	Report
	1,2-Dichloroethane	N/A	Report
	1,1-Dichloroethylene	N/A	Report
	1,2-trans-Dichloroethylene	N/A	Report
	2,4-Dichlorophenol	N/A	Report
	1,2-Dichloropropane	N/A	Report
	1,3-Dichloropropylene	N/A	Report
	Diethyl Phthalate	N/A	Report
	2,4-Dimethylphenol	N/A	Report
	Dimethyl Phthalate	N/A	Report
	4,6-Dinitro-o-Cresol	N/A	Report
	2,4-Dinitrophenol	N/A	Report
	2,4-Dinitrotoluene	N/A	Report
	2,6-Dinitrotoluene	N/A	Report
	Ethylbenzene	N/A	Report
	Fluoranthene	N/A	Report
	Fluorene	N/A	Report
	Hexachlorobenzene	0.00210	0.00444
	Hexachlorobutadiene	N/A	Report
	Hexachloroethane	N/A	Report
	Methyl Chloride	N/A	Report
	Methylene Chloride	N/A	Report
	Naphthalene	N/A	Report
	Nitrobenzene	N/A	Report
	2-Nitrophenol	N/A	Report
	4-Nitrophenol	N/A	Report
	Phenanthrene	N/A	Report
	Phenol	N/A	Report
	Pyrene	N/A	Report
	Tetrachloroethylene	N/A	Report
	Toluene	N/A	Report
	1,2,4-Trichlorobenzene	N/A	Report
	1,1,1-Trichloroethane	N/A	Report
	1,1,2-Trichloroethane	N/A	Report
Trichloroethylene	N/A	Report	
Vinyl Chloride	N/A	Report	
Enterococci (CFU or MPN/100 mL)	168	500	
pH range (SU)	6.0-9.0		

Outfall	Pollutant	Draft Permit	
		Daily Avg	Daily Max
		mg/L	mg/L
002, 003, 004	Flow	N/A	Report
	TOC	N/A	75
	Oil and grease	N/A	15
	pH	6.0 - 9.0 SU	

Outfall	Pollutant	Draft Permit	
		Daily Avg	Daily Max
		Lbs/day	Lbs/day
008	Ammonia as Nitrogen (NH ₃ -N)	1,116	2,224

Outfall	Pollutant	Draft Permit	
		Daily Avg	Daily Max
		lbs/day	lbs/day
009	Flow, MGD	Report	Report
	BOD ₅	Report	Report
	TSS	Report	Report
	COD	Report	Report
	NH ₃ -N	Report	Report
	Total Residual Chlorine	N/A	N/A
	Error! Bookmark not defined.		
	Total Cyanide	Report	Report
	Free Cyanide	N/A	0.647 (Report mg/L)
	Copper, total	N/A	3.18 (Report mg/L)
	Nickel, total	N/A	10.8 (Report mg/L)
	Zinc, total	N/A	17.4 (Report mg/L)
	Acenaphthene	N/A	Report
	Acenaphthylene	N/A	Report
	Acrylonitrile	N/A	Report
	Anthracene	N/A	Report
	Benzene	N/A	Report
	Benzo(a)anthracene	N/A	0.120 (Report mg/L)
	Benzo(a)pyrene	N/A	0.0120 (Report mg/L)
	3,4-Benzofluoranthene	N/A	Report
	Benzo(k)fluoranthene	N/A	Report
	Bis(2-Ethylhexyl) Phthalate	N/A	Report
	Carbon Tetrachloride	N/A	Report
	Chlorobenzene	N/A	Report
	Chloroethane	N/A	Report
	Chloroform	N/A	Report
	2-Chlorophenol	N/A	Report
Chrysene	N/A	Report	

Outfall	Pollutant	Draft Permit	
		Daily Avg	Daily Max
		lbs/day	lbs/day
009	Di-n-Butyl Phthalate	N/A	Report
	1,2-Dichlorobenzene	N/A	Report
	1,3-Dichlorobenzene	N/A	Report
	1,4-Dichlorobenzene	N/A	Report
	1,1-Dichloroethane	N/A	Report
	1,2-Dichloroethane	N/A	Report
	1,1-Dichloroethylene	N/A	Report
	1,2-trans-Dichloroethylene	N/A	Report
	2,4-Dichlorophenol	N/A	Report
	1,2-Dichloropropane	N/A	Report
	1,3-Dichloropropylene	N/A	Report
	Diethyl Phthalate	N/A	Report
	2,4-Dimethylphenol	N/A	Report
	Dimethyl Phthalate	N/A	Report
	4,6-Dinitro-o-Cresol	N/A	Report
	2,4-Dinitrophenol	N/A	Report
	2,4-Dinitrotoluene	N/A	Report
	2,6-Dinitrotoluene	N/A	Report
	Ethylbenzene	N/A	Report
	Fluoranthene	N/A	Report
	Fluorene	N/A	Report
	Hexachlorobenzene	N/A	0.0033 (Report mg/L)
	Hexachlorobutadiene	N/A	1.06
	Hexachloroethane	N/A	Report
	Methyl Chloride	N/A	Report
	Methylene Chloride	N/A	Report
	Naphthalene	N/A	Report
	Nitrobenzene	N/A	Report
	2-Nitrophenol	N/A	Report
	4-Nitrophenol	N/A	Report
	Phenanthrene	N/A	0.890 (Report mg/L)
	Phenol	N/A	Report
	Pyrene	N/A	Report
Tetrachloroethylene	N/A	Report	
Toluene	N/A	Report	
1,2,4-Trichlorobenzene	N/A	Report	
1,1,1-Trichloroethane	N/A	Report	
1,1,2-Trichloroethane	N/A	Report	
Trichloroethylene	N/A	Report	
Vinyl Chloride	N/A	Report	
pH range (SU)	6.0- 9.0		

Outfall	Pollutant	Draft Permit	
		Daily Avg	Daily Max
		lbs/day	lbs/day
010	BOD ₅	1,575	3,928
	TSS	5,698	17,036
	COD	14,020	28,040
	Total Cyanide	207	584
	Acenaphthene	0.565	1.52
	Acenaphthylene	0.565	1.52
	Acrylonitrile	2.47	6.22
	Anthracene	0.565	1.52
	Benzene	0.951	3.50
	3,4-Benzofluoranthene	0.591	1.57
	Benzo(k)fluoranthene	0.565	1.52
	Bis(2-Ethylhexyl) Phthalate	2.65	7.17
	Carbon Tetrachloride	0.463	0.977
	Chlorobenzene	0.386	0.720
	Chloroethane	2.67	6.89
	Chloroform	0.540	1.18
	2-Chlorophenol	0.797	2.52
	Chrysene	0.565	1.52
	Di-n-Butyl Phthalate	0.694	1.47
	1,2-Dichlorobenzene	1.98	4.19
	1,3-Dichlorobenzene	0.797	1.13
	1,4-Dichlorobenzene	0.386	0.720
	1,1-Dichloroethane	0.565	1.52
	1,2-Dichloroethane	1.75	5.42
	1,1-Dichloroethylene	0.411	0.643
	1,2-trans-Dichloroethylene	0.540	1.39
	2,4-Dichlorophenol	1.00	2.88
	1,2-Dichloropropane	3.93	5.91
	1,3-Dichloropropylene	0.745	1.13
	Diethyl Phthalate	2.08	5.22
	2,4-Dimethylphenol	0.463	0.925
	Dimethyl Phthalate	0.488	1.21
	4,6-Dinitro-o-Cresol	2.01	7.12
	2,4-Dinitrophenol	1.83	3.16
	2,4-Dinitrotoluene	2.90	7.33
	2,6-Dinitrotoluene	6.55	16.5
	Ethylbenzene	0.822	2.78
	Fluoranthene	0.643	1.75
	Fluorene	0.565	1.52
	Hexachlorobutadiene	0.514	1.26
Hexachloroethane	0.540	1.39	
Methyl Chloride	2.21	4.88	
Methylene Chloride	1.03	2.29	
Naphthalene	0.565	1.52	
Nitrobenzene	0.694	1.75	
2-Nitrophenol	1.05	1.77	
4-Nitrophenol	1.85	3.19	
Phenanthrene	0.565	1.52	

Outfall	Pollutant	Draft Permit	
		Daily Avg	Daily Max
		lbs/day	lbs/day
010	Phenol	0.386	0.668
	Pyrene	0.643	1.72
	Tetrachloroethylene	0.565	1.44
	Toluene	0.668	2.06
	1,2,4-Trichlorobenzene	1.75	3.60
	1,1,1-Trichloroethane	0.540	1.39
	1,1,2-Trichloroethane	0.540	1.39
	Trichloroethylene	0.540	1.39
	Vinyl Chloride	2.67	6.89
	pH in SU	6.0 - 9.0	

Outfall	Pollutant	Draft Permit	
		Daily Avg	Daily Max
		lbs/day	lbs/day
011	Flow, MGD	2.5	4.2
	BOD ₅	289	752
	TSS	530	1,631
	COD	2,983	5,988
	NH ₃ -N	Report	Report
	Oil and Grease	N/A	Report
	Free Cyanide	0.183	0.386
	Copper, total	0.901	1.91
	Nickel, total	3.05	6.47
	Acenaphthene	0.198	0.531
	Acenaphthylene	0.198	0.531
	Acrylonitrile	0.865	2.18
	Anthracene	0.198	0.531
	Benzene	0.333	1.22
	Benzo(a)anthracene	0.0178	0.0376
	Benzo(a)pyrene	0.0018	0.0038
	3,4-Benzofluoranthene	0.207	0.549
	Benzo(k)fluoranthene	0.198	0.531
	Bis(2-Ethylhexyl) Phthalate	0.928	2.51
	Carbon Tetrachloride	0.162	0.342
	Chlorobenzene	0.135	0.252
	Chloroethane	0.937	2.41
	Chloroform	0.189	0.414
	2-Chlorophenol	0.279	0.883
	Chrysene	0.198	0.531
	Di-n-Butyl Phthalate	0.243	0.513
	1,2-Dichlorobenzene	0.694	1.46
	1,3-Dichlorobenzene	0.279	0.396
	1,4-Dichlorobenzene	0.135	0.252
	1,1-Dichloroethane	0.198	0.531
	1,2-Dichloroethane	0.612	1.90
	1,1-Dichloroethylene	0.144	0.225
	1,2-trans-Dichloroethylene	0.189	0.486
	2,4-Dichlorophenol	0.351	1.00

Outfall	Pollutant	Draft Permit	
		Daily Avg	Daily Max
		lbs/day	lbs/day
011	1,2-Dichloropropane	1.37	2.07
	1,3-Dichloropropylene	0.261	0.396
	Diethyl Phthalate	0.730	1.82
	2,4-Dimethylphenol	0.162	0.324
	Dimethyl Phthalate	0.171	0.423
	4,6-Dinitro-o-Cresol	0.703	2.49
	2,4-Dinitrophenol	0.640	1.10
	2,4-Dinitrotoluene	1.01	2.56
	2,6-Dinitrotoluene	2.29	5.77
	Ethylbenzene	0.288	0.973
	Fluoranthene	0.225	0.612
	Fluorene	0.198	0.531
	Hexachlorobenzene	0.0005	0.0010
	Hexachlorobutadiene	0.157	0.332
	Hexachloroethane	0.189	0.486
	Methyl Chloride	0.775	1.71
	Methylene Chloride	0.360	0.802
	Naphthalene	0.198	0.531
	Nitrobenzene	0.243	0.612
	2-Nitrophenol	0.369	0.622
	4-Nitrophenol	0.649	1.11
	Phenanthrene	0.198	0.531
	Phenol	0.135	0.234
	Pyrene	0.225	0.603
	Tetrachloroethylene	0.198	0.504
	Toluene	0.234	0.721
	1,2,4-Trichlorobenzene	0.612	1.26
	1,1,1-Trichloroethane	0.189	0.486
	1,1,2-Trichloroethane	0.189	0.486
	Trichloroethylene	0.189	0.486
	Vinyl Chloride	0.937	2.41
	Enterococci (CFU or MPN/100 mL)	(168)	(500)
	pH range (SU)	6.0- 9.0	

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.

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 TAC Chapter 39, 50, and 55.

Access to Rules, Laws, and Records

Please consult the following websites to access the rules and regulations applicable to this permit:

- to access the Secretary of State website:
<https://www.sos.state.tx.us/index.shtml>;
- for TCEQ rules in 30 TAC: <https://www.sos.texas.gov/tac/index.shtml> (select “TAC Viewer” on the right, then “Title 30 Environmental Quality”);
- for Texas statutes: <https://statutes.capitol.texas.gov/>;
- to access the TCEQ website: <https://www.tceq.texas.gov/rules/index.html> (for downloadable rules in Adobe PDF format, select “Rules in PDF” under “Related Content”)
- for Federal rules in Title 40 of the Code of Federal Regulations:
<https://www.ecfr.gov> (select “Title 40-Protection of Environment”); and
- for Federal environmental laws: <https://www.epa.gov/laws-regulations>.

Commission records for this facility are available for viewing and copying at TCEQ’s main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of the

Chief Clerk), for the current application until final action is taken. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Deer Park Public Library, 3009 Center Street, Deer Park, Texas.

II. COMMENTS AND RESPONSES

COMMENT 1:

Bayou City Waterkeeper commented that the draft permit and fact sheet were not at the public viewing location indicated in the public notice. As a result, they requested the TCEQ make the documents electronically available to the public, republish the NAPD, and initiate a new 30-day comment period.

RESPONSE 1:

The draft permit and Fact Sheet are required to be available for viewing on the first day of publication of the NAPD in a newspaper of record.¹ The Bayou City Waterkeeper's letter was dated *prior* to the publication of the NAPD.

At this time, the TCEQ does not make permit applications, draft permits, or Fact Sheets electronically available when the public viewing location is open to the public.² In addition to the local public viewing location provided in the notice, Commission records for this facility are available for viewing and copying at TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of the Chief Clerk) until final action is taken. Further, the public notice requirements were fulfilled, and an extended public comment period is not warranted.

COMMENT 2:

Bayou City Waterkeeper commented that the TCEQ must publish documents online in an electronic format.

RESPONSE 2:

There is presently no rule requiring TCEQ to make Water Quality permit application materials available online. A copy of the application, the proposed draft

¹ 30 Tex. Admin. Code 39.405(g)(2)

² The TCEQ temporarily allowed applicants to post materials on the applicant's website for public viewing when available public viewing locations were closed due to COVID-19 restrictions in 2020.

permit, and the Executive Directors preliminary decision are all available for viewing and copying at the Deer Park Public Library, 3009 Center Street, Deer Park, Texas. They are also available at the TCEQ's main office in Austin. At this time TCEQ does not make Water Quality permit applications, draft permits, or fact sheets electronically available online.

COMMENT 3:

Bayou City Waterkeeper expressed concern that the TCEQ did not perform a sufficient antidegradation review for this permit and that a more robust antidegradation review should take place.

RESPONSE 3:

The Executive Director's antidegradation review complied with all statutory and regulatory requirements. Consistent with 30 TAC § 307.5 and the *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review was performed for this permit application. This review involves multiple steps and multiple technical reviews from multiple technical staff.

The first step in this process is to determine the appropriate water quality uses and criteria for the receiving waters in the assessed reach. In this case, the receiving waters in the assessed reach are East Fork Patrick Bayou, and portions of and including the Houston Ship Channel Tidal in Segment No. 1006. East Fork Patrick Bayou was determined to be intermittent with a minimal aquatic life use. Consistent with 30 TAC § 307.5(c)(2)(A) this waterbody is subject to a Tier 1 antidegradation review. A Tier 2 review was not required since there are no water bodies with exceptional, high, or intermediate aquatic life uses within the stream reach assessed, including the Segment.

The second step in the antidegradation review process is to assign critical conditions. Because East Fork Patrick Bayou is initially freshwater, the critical conditions and flow statistics were developed accordingly. The critical low flow, or 7Q2, is the regularly recurring instream flow condition under which minimal dilution will be available. This regulatory metric serves as a threshold for protecting aquatic life from the potentially harmful effects of wastewater discharges during low-flow conditions when aquatic organisms are most vulnerable to the effects of toxics inputs. East Fork Patrick Bayou is classified by Standards as intermittent. There is no

established mixing zone for discharges to intermittent streams. This results in no instream dilution granted to the discharge from Outfall 003 for assessing aquatic life criteria for East Fork Patrick Bayou. In other words, the acute toxicity for aquatic life criteria for East Fork Patrick Bayou are assessed at the end of pipe with 100% effluent.

Additionally, it is the TCEQ's standard procedure to assign critical conditions for water bodies within three miles downstream of a discharge. Since there are tidal portions of East Fork Patrick Bayou within three miles of Outfall 003, additional critical conditions for screening saltwater criteria were recommended. Critical condition recommendations for acute, chronic, and human health criteria were also made for Outfalls 001, 002, 004, 009, and 011 which enter directly into tidal waterbodies (i.e. Segment No. 1006).

The next step in the antidegradation review process is to evaluate the impacts on water quality in the receiving waters to ensure that permitted effluent limits will maintain instream criteria for dissolved oxygen (DO), nutrients, turbidity, dissolved solids, temperature, and toxic pollutants. A DO modeling analysis was conducted to evaluate the potential impact of the proposed discharge on DO levels in the receiving waters to ensure that instream DO concentrations will consistently be maintained at levels that will be protective of aquatic life. Analysis for Outfalls 001, 009, and 011 was performed using an updated version of the calibrated QUAL-TX model documented in the *Waste Load Evaluation WLE-1R for the Houston Ship Channel System (September 2006)*. Based on model results, the effluent limits included in the draft permit for 5-day Carbonaceous Biochemical Oxygen Demand (CBOD₅), ammonia-nitrogen, and minimum effluent DO are predicted to be adequate to ensure that DO levels will be maintained above the criteria established by the Standards Implementation Team throughout the assessment reach. This DO modeling analysis was performed consistent with established TCEQ modeling protocols.

Because the first downstream segment in the discharge route is tidal, there are no criteria for total dissolved solids (TDS), chloride, and sulfate for Segment No. 1006, therefore no screening was performed for TDS, chloride, and sulfate limits.

To address turbidity, the proposed draft permit contains daily average TSS effluent limitations at Outfall 010 (which is a summation outfall of Outfalls 001 and 009) and Outfall 011 of 5,698 lbs/day and 530 lbs/day, respectively. Also, the proposed draft permit contains daily maximum TSS effluent limitations at Outfall 010

and Outfall 011 of 17,036 lbs/day and 1,631 lbs/day, respectively. There is no thermal component expected in the discharge and the segment criterion of 95 degrees Fahrenheit is expected to be met at Outfalls 001, 002, 003, 004, 009, and 011. In addition, East Fork Patrick Bayou, and portions of and including the Houston Ship Channel Tidal in Segment No. 1006 do not exhibit the instream conditions which typically demonstrate a propensity for excessive algal growth (shallow clear water, bedrock or gravel substrate, minimal tree canopy) with the addition of nutrients. Therefore, it was determined that nutrient limits would not be needed for this proposed discharge.

To address toxic pollutants, the permit writer performed water quality screenings as found in Appendix B of the Fact Sheet, using the critical condition information, local water quality information from a nearby freshwater classified segment, Greens Bayou Above Tidal (Segment No. 1016), and expected pollutant loading from a similar facility's discharge. These screenings (called TexTox screening) determine compliance with Texas Surface Water Quality Standards (TSWQS) and permit limits are placed in the permit when screening calculations indicate a need to meet the TSWQS. A site-specific water-effect-ratio of 1.8 was used for total copper based on 30 TAC § 307.10(5), Appendix E of the TSWQS. Water quality-based effluent limits (WQBELs) for the following pollutants and Outfalls were included in the draft permit: benzo(*a*)anthracene, benzo(*a*)pyrene, and hexachlorobenzene at Outfall 001; benzo(*a*)anthracene, benzo(*a*)pyrene, hexachlorobenzene, and hexachlorobutadiene at Outfall 009; and free cyanide (daily maximum only), total copper, total nickel, benzo(*a*)anthracene, benzo(*a*)pyrene, hexachlorobenzene, and hexachlorobutadiene at Outfall 011. The WQBELs calculated for total copper and total nickel at Outfall 011 were more stringent than the technology-based loading limits and are therefore applied in the draft permit. Again, the water quality-based calculations (TexTox screening) is provided in Appendix B of the Fact Sheet.

This facility is authorized to discharge treated sanitary wastewater at Outfalls 001, 009, and 011. The existing permit includes daily average and daily maximum Enterococci limits of 168 CFU or MPN per 100 mL and 500 CFU or MPN per 100 mL, respectively. There have been no violations of bacteria limits during the period reviewed, as discussed in Section VI of the Fact Sheet. This major amendment request does not increase bacteria limits nor increase the amount of sanitary wastewater

discharged. The draft permit is not expected to contribute to the bacteria impairments of the receiving water.

Based on these technical reviews, the Executive Director's Tier I antidegradation review of the Rohm and Haas Texas Incorporated application preliminarily determined that existing water quality uses will not be impaired by the permit. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review was not required since there are no water bodies with exceptional, high, or intermediate aquatic life uses within the stream reach assessed, including the Segment.

COMMENT 4:

Bayou City Waterkeeper expressed concern based on the applicant's compliance history.

RESPONSE 4:

The Executive Director reviews compliance history for the five-year period prior to the date the TCEQ receives a permit application. The compliance history includes multimedia compliance-related components about the site under review. These components include the following: enforcement orders, consent decrees, court judgments, criminal convictions, chronic excessive emissions events, investigations, notices of violations, audits and violations disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution reduction programs, and early compliance.

The Executive Director reviewed the Applicant's compliance history in accordance with the rules in 30 TAC Chapter 60; Rohm and Haas Texas Incorporated has a 5.93 rating. Therefore, according to the classifications from 30 TAC Chapter 60, which are listed below, Rohm and Haas Texas Incorporated is a satisfactory performer:

1. a high performer classification has a rating of fewer than 0.10 points and is considered to have an above-satisfactory compliance record;
2. a satisfactory performer classification has a rating between 0.10 points to 55 points and is considered to generally comply with environmental regulations; or

3. an unsatisfactory performer classification has a rating above 55 points and is considered to perform below minimal acceptable performance standards established by the commission.

30 TAC §§ 60.2(a)(1-3) & (a)(2)(A-C).

The TCEQ issues permits that describe the conditions under which the wastewater facility must operate. All facilities must be designed, operated, and maintained consistent with applicable TCEQ rules. The TCEQ's Office of Compliance and Enforcement ensures compliance with applicable state and federal regulations. If a facility is found to be out of compliance with the terms or conditions of the permit, the Applicant may be subject to enforcement. If anyone experiences any suspected incidents of noncompliance with the permit or TCEQ rules, they may report these to the TCEQ by calling the 24-hour toll-free number at (888) 777-3186, or by contacting The TCEQ Region 12 Office at (713) 767-3714. Citizen complaints may also be filed online at:

<https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html>.

COMMENT 5:

Bayou City Waterkeeper requested a public meeting and a contested case hearing on this application.

RESPONSE 5:

Title 30 TAC § 55.154(c) provides that a public meeting is to be held if: (1) the Executive Director determines that there is a substantial or significant degree of public interest in an application; (2) a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held; or (3) when a public meeting is otherwise required by law. Based on these factors, the Executive Director has determined not to hold a public meeting on this application.

The ED acknowledges the request for a contested case hearing. The ED has considered all timely comments and prepared this response to all relevant, material, or significant public comment. This RTC will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. The

mailing also provides instructions for requesting a contested case hearing or reconsideration of the ED's decision. Following the close of all applicable comment and request periods, the ED will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant material water quality concerns submitted during the comment period. If the application does go to hearing, the final decision regarding this application will be made by the TCEQ's Commissioners.

III. CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

No changes were made to the draft permit.

Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker,
Executive Director

Charmaine Backens, Deputy Director
Environmental Law Division



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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on October 07, 2022, the “Executive Director’s Response to Public Comment” for Rohm and Haas Texas Incorporated Permit No. WQ0000458000 was filed with the Texas Commission on Environmental Quality’s Office of Chief Clerk.



Bobby Salehi, Staff Attorney
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