

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

March 14, 2024

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Undine Texas Environmental, LLC

VIA EFILE TEXAS

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Ronnie Autry

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RE: SOAH Docket Number 582-23-20937; TCEQ Docket No. 2023-0163-MWD; Application of Undine Texas Environmental, LLC for TPDES Permit No. WQ0016046001

Dear Parties:

On February 7, 2024, the undersigned Administrative Law Judge (ALJ) issued the Proposal for Decision (PFD) in this case. On February 27, 2024, the Executive Director (ED) of the Texas Commission on Environmental Quality (Commission), Brazoria County (County), and Ronnie Autry filed exceptions. The ED and Undine Texas Environmental, LLC (Applicant) timely filed replies to exceptions.

The exceptions of the County and Mr. Autry (Protestants) largely reiterate arguments presented at hearing and addressed in the PFD. Protestants argue that the use of the default standard hydraulic coefficients that inaccurately characterize the width and depth of the actual receiving ditch resulted in a gross over-prediction of water re-aeration. The width and depth of the ditch were part of the standard hydraulic coefficients rather than site-specific inputs into the model. Applicant did not provide site-specific data, and no site-specific data was requested. No statute, rule, or written policy was presented which required Applicant to provide site-specific data for the QUAL-TX modeling. Based on the modeling, Dr. Lu concluded the Draft Permit was protective of water quality, designated uses, aquatic life, wildlife, and livestock in the immediate vicinity of the proposed discharge route. The ALJ recommends no changes in response to these exceptions.

Protestants argue that pollutants, such as nitrates, may contaminate groundwater and become a threat to human health. Protestants point out that the ED did not make an independent determination about the impact to groundwater. The Commission's policy provides that a draft permit that is protective of surface water quality will also be protective of groundwater in the vicinity. Generalized concerns about nitrates in wastewater effluent contaminating groundwater does not rebut Applicant's prima facie demonstration that the Draft Permit is protective of groundwater and human health. The ALJ recommends no changes in response to these exceptions.

In response to the ED's exceptions, the ALJ recommends the following changes to the PFD and Proposed Order:

- Change all instances of "*e. coli*" to "*E. coli*."
- In the list of admitted exhibits in footnote 5 of the PFD, add Applicant Exhibit C.
- In the second sentence of section IV.3.A of the PFD, change the two instances of "4.0 mg/L" minimum DO to "3.0 mg/L."
- In FOF No. 6, change "slug" to "sludge."
- In FOF No. 8, delete the phosphorus limit in the table.
- In FOF No. 17, change "August 21, 2023" to "August 14, 2023."
- Amend FOF No. 21 to state, "The Texas Surface Water Quality Standards (TSWQS) are found in 30 TAC chapter 307 and establish

that the policy of the state is to maintain the quality of water in the state. The TSWQS also establish narrative and numerical water quality standards.”

- Amend FOF No. 23 to state, “The TSWQS and IPs are used, in part, to set permit limits for wastewater discharges.”
- Amend in FOF No. 27 to state, “The discharge will be to Angleton Drainage District Ditches Nos. 7 and 22 non-tidal, which are characterized as intermittent with pools and having limited aquatic life use.”
- Amend FOF No. 30 to state, “A Tier 2 antidegradation review preliminarily determined that no significant degradation of water quality is expected in Angleton Drainage District Ditch 22’s tidal reach and Bastrop Bayou Tidal, which have been identified as having high aquatic life uses.”
- Amend COL No. 9 to state, “TCEQ’s review of the application was performed in accordance with TCEQ’s rules, standard operating procedures and IPs.”
- Amend COL No. 10 to state, “The draft permit complies with the location standards in 30 Texas Administrative Code Chapter 309, subchapter B.”

With the changes noted above, the PFD and Proposed Order are ready for the Commission’s consideration.

ALJ Signature:



Linda Brite,

Presiding Administrative Law Judge

CC: Service List