

**SOAH DOCKET NO. 582-23-20937
TCEQ DOCKET NO. 2023-0163-MWD**

APPLICATION BY	§	BEFORE THE STATE OFFICE
UNDINE TEXAS ENVIRONMENTAL,	§	
LLC FOR	§	OF
PERMIT NO. WQ0016046001	§	
	§	ADMINISTRATIVE HEARINGS

**APPLICANT’S REPLY TO PROTESTANTS’ EXCEPTIONS TO PROPOSAL FOR
DECISION**

COMES NOW Undine Texas Environmental, LLC (“Undine” or “Applicant”) and files this its Reply to Protestant Autry and Brazoria County (collectively, “Protestants”) Exceptions to the Proposal for Decision, and in support thereof would show the following:

I. SUMMARY

The Administrative Law Judge (“ALJ”) correctly applied the facts to the applicable law in developing the proposal for decision (“PFD”). The protestants’ exceptions raise no new arguments and do nothing to call into question the correctness of the PFD. Undine Texas Environmental LLC urges that the ALJ reject the protestants’ exceptions and proposed corrections to the PFD.

II. DISCUSSION

The Protestants ask the ALJ to reverse the reasoned decision set out in the PFD based on two primary issues: (1) the QUAL-TX modeling analysis; and (2) the absence of an independent assessment.

A. QUAL-TX Modeling Analysis

Protestants again seek to impose requirements that are not relevant to the Application. They do so with a variety of statements and assertions that have no support in the record; all while failing to point to any requirement the Applicant has failed to satisfy. As correctly set out in the PFD and supported by the record, the Applicant is not required to submit site-specific data and may rely on

general hydraulic assumptions in determining how the proposed discharge would impact the subject ditches. PFD at p. 14.

Dr. Ross made generalized statements regarding the flow width and depth of the receiving waters, while providing no quantification of those observations such that she would be able to provide any supportable assertion that the QUAL-TX modeling failed to accurately assess the dissolved oxygen within the receiving water. Further, the PFD correctly reflects that the Executive Director's witness, Dr. Lu, was not deficient in any of her evaluation or study, particularly recognizing that the alleged faulty assumed characteristics were not inputs used in the model. PFD at p.13-14.

B. The Absence of an Independent Assessment.

Protestants repeat their argument that groundwater quality will be impacted and that neither the Applicant nor TCEQ conducted an independent assessment. Neither of these constitutes a new argument and the PFD correctly considered and rejected each of these assertions. Further, it is well established by the Commission that if surface water quality will be protected under a draft permit, then groundwater quality in the vicinity will not be impacted. Protestants again put forward Dr. Ross' testimony despite the record evidence, noted by the ALJ in the PFD and otherwise, that leaves protestants well short of rebutting the presumption that the Draft Permit will not impact groundwater quality. PFD at p. 17. Again, protestants cannot point to any requirement that Applicant has failed to satisfy. PFD at p. 17.

III. CONCLUSION

Undine asserts that the PFD is correct in all respects (other than those identified by the Executive Director in its exceptions) and that the ALJ should reject the protestant's exceptions and

proposed corrections to the PFD. Undine further asserts that the ALJ should accept the Executive Director's exceptions and proposed corrections to the PFD.

Respectfully submitted,

Gregg Law PC



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**ATTORNEYS FOR APPLICANT
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CERTIFICATE OF SERVICE

I certify that on March 7, 2024, a true and accurate copy of the foregoing document has been served on the following counsel electronically through an electronic filing manager or by email.



Peter T. Gregg