

TCEQ DOCKET NO. 2023-0163-MWD

**APPLICATION BY UNDINE
TEXAS ENVIRONMENTAL,
LLC FOR NEW TPDES
PERMIT NO. WQ0016046001**

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**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY**

**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS AND
REQUESTS FOR RECONSIDERATION**

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Hearing Requests (Response) on the application by Undine Texas Environmental, LLC (Applicant or Undine), for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016046001. Attached for Commission consideration are the Executive Director's Satellite Maps.

I. Executive Summary

The TCEQ received 100 Hearing Requests and 13 Requests for Reconsideration. Most of the hearing requests and Motions for Reconsideration were from individuals who provided an address in Brazoria County; however, the addresses provided are not along the discharge route nor near the location of the proposed facility. Brazoria County also submitted a timely hearing request.

After evaluating the hearing requests, the Executive Director has determined that Ronnie Gene Augry and Brazoria County have demonstrated that they have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application that is not common to members of the general public, and therefore, recommends that the Commission find that Ronnie Gene Augry and Brazoria County are affected persons because they meet the criteria set out in 30 TAC § 55.203. According to Mr. Augry's hearing request, the discharge route is within 300 feet of his home, and he expressed concern about the impact of the discharge on his wells (RTC Response 24); thus, he identified a personal justiciable interest affected by the application. Brazoria County is a local government with authority under state law over issues raised by the application and therefore can be considered an affected

person.¹ Brazoria County raised concerns regarding RTC responses 33, 57, and 63.

The Executive Director recommends the Commission deny all other hearing requests, and deny all Requests for Reconsideration. The Executive Director also recommends referring the following issues to the State Office of Administrative Hearings:

Issue 1. Whether the draft permit includes adequate protection for water wells. (RTC No. 27)

Issue 2. Whether the draft permit includes adequate monitoring for bacterial species in tidal streams. (RTC No. 33)

Issue 3. Whether the draft permit includes adequate protections for aquatic species, including fisheries and oysters (RTC Nos. 57 and 63)

II. Description of the Proposed Wastewater Treatment Facility

Undine applied for a new TPDES permit (WQ0016046001) to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.250 million gallons per day (MGD). The proposed wastewater treatment facility (WWTF) will be located approximately 2,900 feet southwest of the intersection of County Road 220 and Old Angleton Road, in Brazoria County, Texas 77515. The proposed WWTF will serve the Reserve in Angleton.

If the permit is issued, the WWTF will be an activated sludge process plant operated in the complete mix mode. Treatment units in the Interim I phase will include a bar screen, one aeration basin, one final clarifier, one sludge digester, and one chlorine contact chamber. Treatment units in the Interim II phase will include a bar screen, two aeration basins, one final clarifier, two sludge digesters, and one chlorine contact chamber. Treatment units in the Final phase will include a bar screen, four aeration basins, one final clarifier, four sludge digesters, and one chlorine contact chamber. The facility has not been constructed.

The draft permit authorizes a discharge of treated domestic wastewater at an Interim I volume not to exceed a daily average flow of 0.0625 MGD, an Interim II volume not to exceed a daily average flow of 0.125 MGD, and a final volume not to exceed a daily average flow of 0.250 MGD. The effluent limitations in all phases of the draft permit, based on a 30-day average, are 10 mg/l five-day Carbonaceous

¹ 30 TAC § 55.203.

Biochemical Oxygen Demand (CBOD5), 15 mg/l total Suspended Solids (TSS), 3 mg/l Ammonia-nitrogen (NH3-N), 126 colony forming units (CFU) or most probable number (MPN) of *E. coli* per 100 ml, and 4.0 mg/l minimum Dissolved Oxygen (DO). The effluent shall contain a total chlorine residual of at least 1.0 mg/l and shall not exceed a Total Chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The draft permit includes a requirement for the permittee to obtain legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the permittee according to 30 TAC § 309.13(e)(3).

The treated effluent will be discharged via pipe to Angleton Drainage District Ditch 7, thence to Angleton Drainage District Ditch 22, thence to Bastrop Bayou Tidal in Segment No. 1105 of the San Jacinto-Brazos Coastal Basin. The unclassified receiving water uses are minimal aquatic life use for Angleton Drainage District Ditch 7 and Angleton Drainage District Ditch 22 (non-tidal) and high aquatic life use for Angleton Drainage District Ditch 22 (tidal). The designated uses for Segment No. 1105 are primary contact recreation and high aquatic life use. The effluent limitations in the draft permit will maintain and protect the existing instream uses. In accordance with 30 TAC § 307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. 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. A Tier 2 review has 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 use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. Effluent limitations for the conventional effluent parameters (i.e., Five-Day Biochemical Oxygen Demand or Five-Day Carbonaceous Biochemical Oxygen Demand, Ammonia Nitrogen, etc.) are based on stream standards and waste load allocations for water-quality limited streams as established in the Texas Surface Water Quality Standards (TSWQS) and the State of Texas Water Quality Management Plan (WQMP). In a case such as this, end-of-pipe compliance with pH limits between 6.0 and 9.0 standard units reasonably assures instream compliance

with the TSWQS for pH when the discharge authorized is from a minor facility. This technology-based approach reasonably assures instream compliance with TSWQS criteria due to the relatively smaller discharge volumes authorized by these permits. This conservative assumption is based on TCEQ sampling conducted throughout the state which indicates that instream buffering quickly restores pH levels to ambient conditions. Similarly, this approach has been historically applied in EPA issued NPDES general permits where technology-based pH limits were established to be protective of water quality criteria.

The discharge from this permit action is not expected to have an effect on any federal endangered or threatened aquatic or aquatic dependent species or proposed species or their critical habitat. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the TPDES (September 14, 1998; October 21, 1998 update). To make this determination for TPDES permits, TCEQ and EPA only considered aquatic or aquatic dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. Though the piping plover, *Charadrius melodus* Ord, can occur in Brazoria County, the county is north of Copano Bay and not a watershed of high priority per Appendix A of the biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. The permit does not require EPA review with respect to the presence of endangered or threatened species.

Segment No. 1105 is currently listed on the state's inventory of impaired and threatened waters (the 2020 CWA § 303(d) list). The list is for bacteria in water from the confluence with Bastrop Bay 1.1 km (0.7 mi) downstream of the Intracoastal Waterway in Brazoria County to a point 8.6 km (5.3 mi) upstream of Business 288 at Lake Jackson in Brazoria County (AU 1105_01). This facility is designed to provide adequate disinfection and, when operated properly, should not add to the bacterial impairment of the segment. In addition, in order to ensure that the proposed discharge meets the stream bacterial standard, an effluent limitation of 126 colony-forming units (CFU) or most probable number (MPN) of *E. coli* per 100 ml has been added to the draft permit.

III. Procedural Background

TCEQ received the application for a new permit on September 24, 2021, and declared it administratively complete on January 13, 2022. Undine published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English and Spanish on January 29 -30, 2022, in *The Facts*. The application was determined technically complete on March 14, 2022. Undine published the Notice of Application and Preliminary Decision (NAPD) in English on March 24, 2022, in *The Facts*. The Notice of Public Meeting was published in *The Facts* on June 21, 2022. A Public Meeting was held in Angleton on July 28, 2022. The comment period for this application closed at the close of the public meeting. The Executive Director's Response to Comments was mailed on November 16, 2022, the Hearing Request/Request for Reconsideration period ended on December 16, 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 Chapters 39, 50, and 55. Senate Bill 709 amended the requirements for comments and contested case hearings. This application is subject to those changes in the law.

IV. 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. SB 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:

Response to Requests

The Executive Director, 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 requestor is an affected person;

2. which 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 Executive Director's Response to Comment;
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).

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 requestor prior to the filing of the Executive Director's Response to Comment. 30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

1. give the name, 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. for applications filed on or after September 1, 2015, 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).

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. Section 55.203 sets out who may be considered an affected person.

- a. 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.
- b. 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.
- c. In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 1. whether the interest claimed is one protected by the law under which the application will be considered;
 2. distance restrictions or other limitations imposed by law on the affected interest;
 3. whether a reasonable relationship exists between the interest claimed

and the activity regulated;

4. likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
5. likely impact of the regulated activity on use of the impacted natural resource by the person;
6. whether the requestor timely submitted comments on the application which were not withdrawn; and
7. for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

In making affected person determinations, the commission may also consider to the extent consistent with case law:

1. 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;
2. the analysis and opinions of the executive director; and
3. 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

“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).

V. Analysis of the Requests

A. Analysis of the Hearing 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.

B. Whether the Individual Requesters Meet the Affected Person Requirements

As discussed above, the Executive Director recommends that the Commission find that Ronnie Gene Augry and Brazoria County are affected persons. The other hearing requestors did not demonstrate a personal justiciable interest not in common with the general public. None of the other individual requestors demonstrated a personal justiciable interest not in common with the general public.

Persons within approximately five miles of the facility. Other than Ronnie Gene Augry, most of these individuals provided addresses that are not along the proposed discharge route and are more than 1.5 miles from the facility. None of the individuals, other than Ronnie Gene Augry, demonstrated how they would be affected differently than the general public: Jamie Ballaurd, Kevin Buchannan, Kathy Cagel, Jacqueline Dunn Cunningham, Betsy David, Glen David, Michael Wayne Durham, Stephanye Durham, Rodrigo Escalante, Edwin Keonitzer, Frances Keonitzer, John and Dana Sue Fitze, Lori and Greg Hawkins, Gregory Hawkins, Jr., Monica Jones, Lauren Milliorn, Ernestina Mook, Debra Oliver, James Phillips, Shirley Phillips, Emil E Prihoda, Bob Purnell, Melody Purnell, Linda and Timothy Strickland, Janet Waite, James Weigel, and Chris Zieber.

Persons within approximately five to ten miles of the facility. These individuals did not demonstrate a personal justiciable interest that is not in common with the general public: Misty Bays, Lisa Brewer, Deryll Mark Broaddus, Sheryl Broaddus, Brennan Browning, Kristin Bulanek, Evan W. Burris, Ashlyne Davidson, Aubree

Davidson, Jerry Lee Davis, Jr., Jimmy Davidson, Michael Richard Durham, Karen Durham, Felecia Duval, Sherrie Felder, Sherri Fossati, Garry Gann, Rhonda Harley, Stanley Harley, David Wayne Henson, Stefanie Henson, Michael Lee Holt, Dr. Barbara Marino, Colton Marino, Paul Marino, James A. Meyer, Gilner Murrel, James W. Perouty, Matti Moore Perouty, James Pfeffer, Kenneth R. Purswell, Barry T. Reynolds, Lawana Reynolds, Bill Joseph Russo, Jennifer Russo, Jane Tumlinson, Bruce Vincent, Donna Walker, Charles Zieber, and Tammi Zieber.

Persons more than ten miles from the facility: Justin Duke, Cuthrell Shane Hicks, Richard L. Kerr, Jr., James Arthur Meyer, Charles E. Zieber, Carole J. Zieber and Harper L. Zlebis.

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

The Executive Director has analyzed issues raised in accordance with the regulatory criteria. The issues discussed were raised during the public comment period and addressed in the RTC. None of the issues were 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.² The issues raised for this application and the Executive Director's analysis and recommendations follow.

Issue 1. Whether the proposed permit will impact water wells. Whether the draft permit includes adequate protection for impact water wells. (RTC No. 27)

This 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. The issue was raised by Ronnie Gene Augry who the Executive Director recommends the Commission find is an affected person.

The Executive Director recommends the Commission refer this issue to SOAH.

Issue 2. Whether the draft permit includes adequate monitoring for bacterial species in tidal streams. (RTC No. 33)

This 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. The issue was raised by Brazoria County who the Executive Director

² Tx. Govt. Code § 2003.047(e-1); 30 TAC § 55.211(c)(2)(A)(ii).

recommends the Commission find is an affected person. This issue was also raised by Tammi Zieber who the Executive Director recommends the Commission find is not an affected person.

The Executive Director recommends the Commission refer this issue to SOAH.

Issue 3. Whether the draft permit includes adequate protections for aquatic species, including fisheries and oysters. (RTC Nos. 57 and 63);

This 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. The issue was raised by Brazoria County who the Executive Director recommends the Commission find is an affected person.

The Executive Director recommends the Commission refer this issue to SOAH.

Issue 4. Whether all appropriate governmental entities had the opportunity to review the application. RTC Comments 12, 13, and 14.

This issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and it is relevant and material to the issuance of the draft permit; however, it was not raised by a person with a personal justiciable interest in the application. This issue was raised by Michael Wayne Durham and John and Dana Sue Fitze, who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 5. Whether the proposed discharge should be allowed, or if a different location or manner of discharge would be more protective of the environment. RTC Comments 4, 5, 7, 8, 42.

This issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and it is relevant and material to the issuance of the draft permit; however, it was not raised by a person with a personal justiciable interest in the application. This issue was raised by Jammie Ballaurd, Misty Bays, Kristin Bulanek, Ashlyne Davidson, Jimmy Davidson, Michael Wayne Durham, Michael Richard Durham, Felecia Duval, Sherri Fossati, Rhonda Harley, Stanley Harley, James A. Meyer, Kenneth R. Purswell, Linda Strickland, Timothy Strickland, Bruce Vincent, and Tammi Zieber,

who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 6. Whether the application should be denied because the facility could fail. RTC Comment 6.

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. Therefore, The ED recommends the Commission not refer the issue to SOAH. This issue was raised by Michael Wayne Durham, Michael Richard Durham, Sherri Fossati, and Kenneth Purswell, who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 7. Whether an Environmental Impact Statement should have been prepared. RTC Comment 11.

This issue involves a disputed question of law, was raised during the comment period, was not withdrawn. However, the Commission may only refer questions of fact or mixed questions of law to SOAH. This issue was raised by Sheryl Broaddus, Felecia Duval, and Kenneth R. Purswell.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 8. Whether all public participation requirements were met. RTC Comments 9, 20, 21, 64.

This issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and it is relevant and material to the issuance of the draft permit; however, it was not raised by a person with a personal justiciable interest in the application. This issue was raised by Michael Wayne Durham and Lisa Brewer, who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 9. Whether the permit, if issued, will negatively impact water quality. RTC Comments 23, 24.

This issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and it is relevant and material to the issuance of the draft

permit. This issue was raised by Betsy David, Glen David, Michael Richard Durham, Sheri Fossati, Garry Gann, Lori Hawkins, Greg Hawkins, Gregory Hawkins, Jr., Michael Lee Holt, Monica Jones, Edwin Keonitzer, Richard L. Kerr, Jr., Colton Marino, Dr. Barbara Marino, Paul Marino, Lauren Milliorn, Ernestina Mook, Mattie Moore Perouty, James Phillips, Shirley Phillips, Bob Purnell, Melody Purnell, Emil E. Pihoda, Kenneth Purswell, Barry T. Reynolds, Lawana Reynolds, Bill Joseph Russo, Jennifer Russo, Jane Tumlinson, Janet Waite, Donna Walker, Charles Zieber, and Tammi Zieber.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 10. Whether the permit, if issued, will negatively impact wildlife or aquatic species, or the ecosystem, including protected grasses. RTC Comments 25, 58, 60, 61, and 74.

This issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and it is relevant and material to the issuance of the draft permit; however, it was not raised by a person with a personal justiciable interest in the application. This issue was raised by Misty Bays, Kristin Bulanek, Kathy Cagel, Betsy David, Glen David, Michael Wayne Durham, Michael Richard Durham, Sheri Fossati, Garry Gann, Lori Hawkins, Greg Hawkins, Gregory Hawkins, Jr., Michael Lee Holt, Monica Jones, Edwin Keonitzer, Richard L. Kerr, Jr., Colton Marino, Dr. Barbara Marino, Paul Marino, Lauren Milliorn, Ernestina Mook, Mattie Moore Perouty, James Phillips, Shirley Phillips, Bob Purnell, Melody Purnell, Emil E. Pihoda, Kenneth Purswell, Barry T. Reynolds, Lawana Reynolds, Bill Joseph Russo, Jennifer Russo, Jane Tumlinson, Janet Waite, Donna Walker, Charles Zieber, and Tammi Zieber, who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 11. Whether human health will be protected. RTC Comments 48, 51, 52.

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn, and it is relevant and material to the issuance of the draft permit; however, it was not raised by a person with a personal justiciable interest in the application. This issue was raised by Michael Wayne Durham, James W. Perouty, and Tammi Zieber, who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 12. Whether fish in the receiving water will be safe to eat. RTC Comment 26.

This issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and it is relevant and material to the issuance of the draft permit; however, it was not raised by a person with a personal justiciable interest in the application. This issue was raised by Kathy Cagel, Kristin Bulanek, Kevin Buchanan, Betsy David, Glen David, Jerry Lee Davis, Jr., Sheri Fossati, Garry Gann, Lori Hawkins, Greg Hawkins, Gregory Hawkins, Jr., Michael Lee Holt, Monica Jones, Edwin Keonitzer, Richard L. Kerr, Jr., Colton Marino, Dr. Barbara Marino, Paul Marino, Lauren Milliorn, Ernestina Mook, Mattie Moore Perouty, James Phillips, Shirley Phillips, Bob Purnell, Melody Purnell, Emil E. Prihoda, Kenneth Purswell, Barry T. Reynolds, Lawana Reynolds, Bill Joseph Russo, Jennifer Russo, Jane Tumlinson, Janet Waite, Donna Walker, Charles Zieber, and Tammi Zieber, who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 13. Whether the Watershed Protection Plan prohibits the issuance of the permit. RTC Comment 29.

This issue involves a disputed question of law, was raised during the comment period, was not withdrawn. However, the Commission may only refer questions of fact or mixed questions of law to SOAH. This issue was raised by Sherri Fossati, who the Executive Director recommends the Commission find is not an affected person.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 14. Whether the discharge will be protective of wildlife. RTC Comment 57.

This issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and it is relevant and material to the issuance of the draft permit; however, it was not raised by a person with a personal justiciable interest in the application. This issue was raised by Jamie Ballaurd who the Executive Director recommends the Commission find is not an affected person.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 15. Whether the draft permit includes all appropriate requirements. RTC Comments 31, 32, 34, 37, 38, 47, 55.

This issue involves a disputed question of fact, was raised during the comment

period, was not withdrawn, and it is relevant and material to the issuance of the draft permit; however, it was not raised by a person with a personal justiciable interest in the application. This issue was raised by Michael Richard Durham, John and Dana Sue Fitze, James A. Meyer, Linda Strickland, Timothy Strickland, and Tammi Zieber, who the Executive Director recommends the Commission find are not affected persons. The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 16. Whether the application should be denied based on the Applicant's Compliance History. RTC Comment 36.

This issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and it is relevant and material to the issuance of the draft permit; however, it was not raised by a person with a personal justiciable interest in the application. This issue was raised by Michael Richard Durham and Sherri Fossati, who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 17. Whether a TMDL is required for salinity. RTC Comment 46.

This issue involves a disputed question of law, was raised during the comment period, was not withdrawn. However, the Commission may only refer questions of fact or mixed questions of law to SOAH. This issue was raised by Tammi Zieber, who the Executive Director recommends the Commission find is not an affected person.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 18. Whether WWTPs should be allowed to discharge to surface water. RTC Comment 53.

This issue involves a disputed question of law, was raised during the comment period, was not withdrawn. However, the Commission may only refer questions of fact or mixed questions of law to SOAH. This issue was raised by Michael Wayne Durham and Michael Richard Durham, who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 19. Whether the discharge will negatively impact recreation. RTC Comment 65.

This issue involves a disputed question of fact, was raised during the comment

period, was not withdrawn, and it is relevant and material to the issuance of the draft permit; however, it was not raised by a person with a personal justiciable interest in the application. This issue was raised by Kristin Bulanek, Jerry Lee Davis, Jr., Michael Wayne Durham, Michael Richard Durham, Felecia Duval Sherri Fossati, Rhonda Harley, Stanley Harley, James Arthur Meyer, Lauren Milliorn, Kenneth R. Purswell, Linda Strickland, Timothy Strickland, and Harper Zlebis, who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 20. Whether the discharge will negatively impact the Commenters way of life and general safety. RTC Comments 66 and 68.

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. Therefore, The Executive Director recommends the Commission not refer the issue to SOAH. This issue was raised by Kristin Bulanek and Lauren Milliorn, who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 21. Whether the discharge will cause flooding. RTC Comment 67.

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. Therefore, The Executive Director recommends the Commission not refer the issue to SOAH. This issue was raised by Lisa Brewer, Kevin Buchanan, Linda Strickland, and Timothy Strickland, who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 22. Whether the WWTP should be located by a landfill. RTC Comment 69.

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. Therefore, The Executive Director recommends the Commission not refer the issue to SOAH. This issue was raised by Rhonda Harley and Stanley

Harley, who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 23. Whether the discharge will cause additional silting and sediment in the receiving water. RTC Comment 70.

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. Therefore, The Executive Director recommends the Commission not refer the issue to SOAH. This issue was raised by Michael Richard Durham and Tammi Zieber who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

Issue 24. Whether the WWTF and discharge will negatively impact property values. RTC Comment 73.

This issue involves a disputed question of fact, was raised during the comment period, and was not withdrawn. However, it is not relevant and material to the issuance of the draft permit. Therefore, The Executive Director recommends the Commission not refer the issue to SOAH. This issue was raised by Ronnie Gene Augry, Ashlyne Davidson, Jimmy Davidson, Michael Richard Durham, and Kenneth R. Purswell, who the Executive Director recommends the Commission find are not affected persons.

The Executive Director recommends the Commission **not** refer this issue to SOAH.

V. Requests For Reconsideration

TCEQ's rules provides that the request for reconsideration must expressly state that the person is requesting reconsideration of the executive director's decision and provide reasons why the decision should be reconsidered. 30 TAC § 55.201(e). None of the Requests For Reconsideration meet this standard.

The Commission received timely Requests for Reconsideration from Representative Mays Middleton, Representative Ed Thompson, Representative Cody Thane Vasut, Brazoria County Judge L.M. "Matt" Sebesta Jr., Mayor Steve Boykin, David Lee Durham, Michael Wayne Durham, Rodrigo Escalante, Ernestina Mook, Lawana

Reynolds, Jimmie Silvers, and Bruce Vincent.

After reviewing the Requests for Reconsideration, the Executive Director did not see any cause for changing the draft permit. Even if the Commission disagrees, the requests will become moot if the Commission grants any of the hearing requests. Because the Executive Director recommends granting two of the hearing requests and continues to support the draft permit, the Executive Director recommends the Commission deny all Requests for Reconsideration.

VI. Contested Case Hearing Duration

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

VII. Conclusion

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends the Commission deny all Requests for Reconsideration.
2. The Executive Director recommends that the Commission find Brazoria County and Ronnie Gene Augry are affected persons.
3. The Executive Director recommends that the Commission find that all other requestors are not affected persons and deny their hearing requests.
4. If referred to SOAH that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.
5. If referred to SOAH, concurrently refer the matter to Alternative Dispute Resolution.
6. If referred to SOAH, refer the following issues as raised by an affected person identified by the Executive Director:

Issue 1. Whether the draft permit includes adequate protection for water wells.
(RTC No. 27)

Issue 2. Whether the draft permit includes adequate monitoring for bacterial species in tidal streams. (RTC No. 33)

Issue 3. Whether the draft permit includes adequate protections for aquatic species, including fisheries and oysters. (RTC Nos. 57 and 63)

Respectfully submitted,

Texas Commission on Environmental
Quality

Erin E. Chancellor
Interim Executive Director

Charmaine Backens
Acting Director Office of Legal Services

Guy Henry
Acting Deputy Director
Environmental Law Division

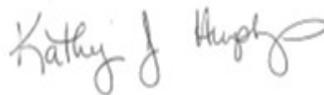


Kathy Humphreys
Staff Attorney
Environmental Law Division
State Bar of Texas No. 24046858
MC-173, P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-3417

REPRESENTING THE EXECUTIVE
DIRECTOR OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on March 8, 2022 the “Executive Director’s Response to Hearing Requests” for Undine Texas Environmental, LLC WQ0016046001, was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the mailing list provided by the Office of the Chief Clerk via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Kathy Humphreys
Staff Attorney
Environmental Law Division

Attachment A

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.

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Undine Texas Environmental, LLC

TPDES Permit No. WQ0016046001

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



Protecting Texas by
Reducing and
Preventing Pollution

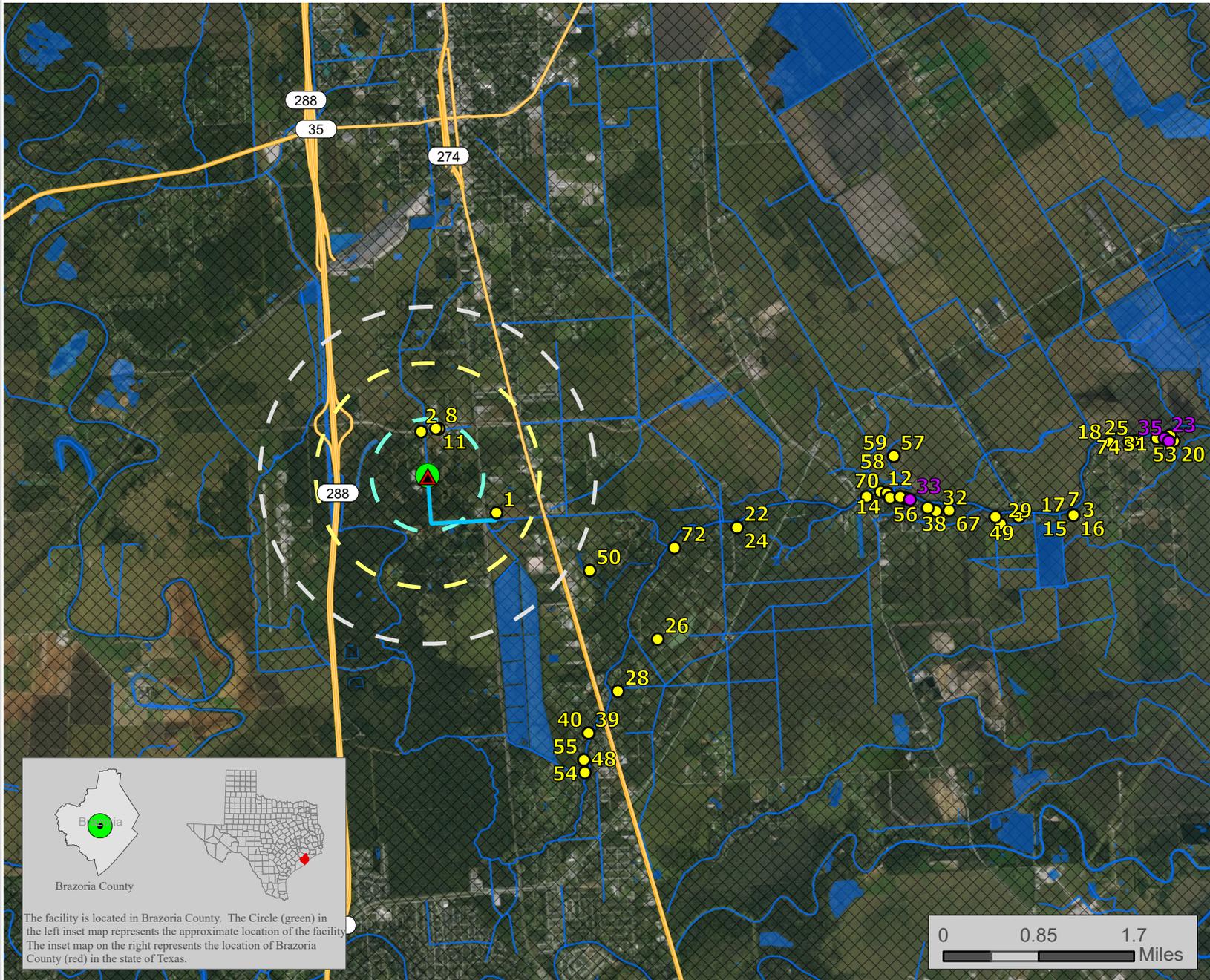
Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 3/3/2023
CRF 0082368
Cartographer: cschrade



- Requestors
- Requestors 2nd Address
- Facility
- ▲ Outfall
- 1 mi Discharge Route
- 0.5 mi Radius
- 1.0 mi Radius
- 1.5 mi Radius
- Brazoria County

Requestors in red are at least 5 mi away from the facility.

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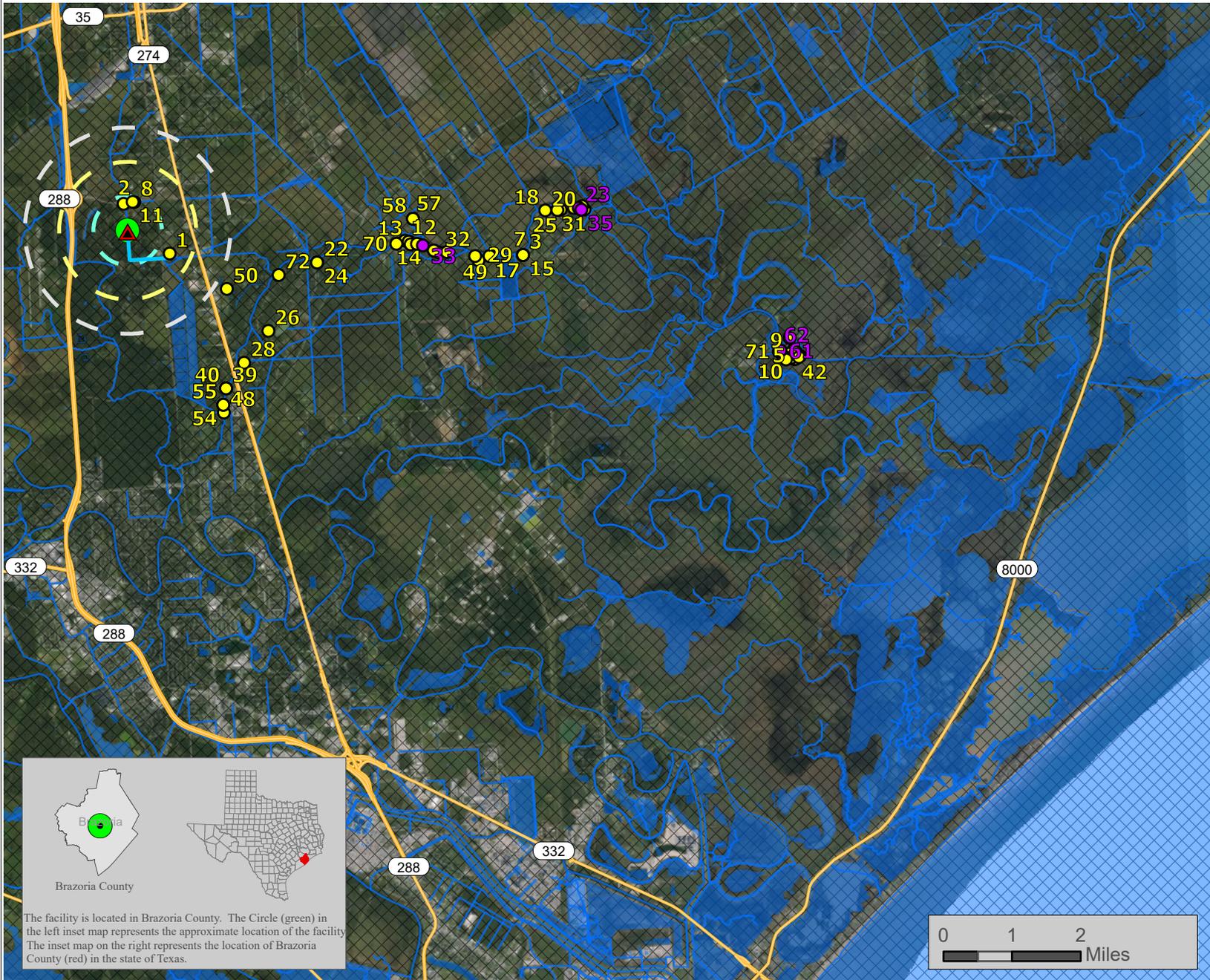
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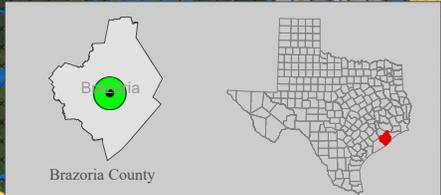
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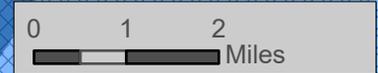


- Requestors
 - Requestors 2nd Address
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 - 1 mi Discharge Route
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- Requestors in red are at least 5 mi away from the facility.

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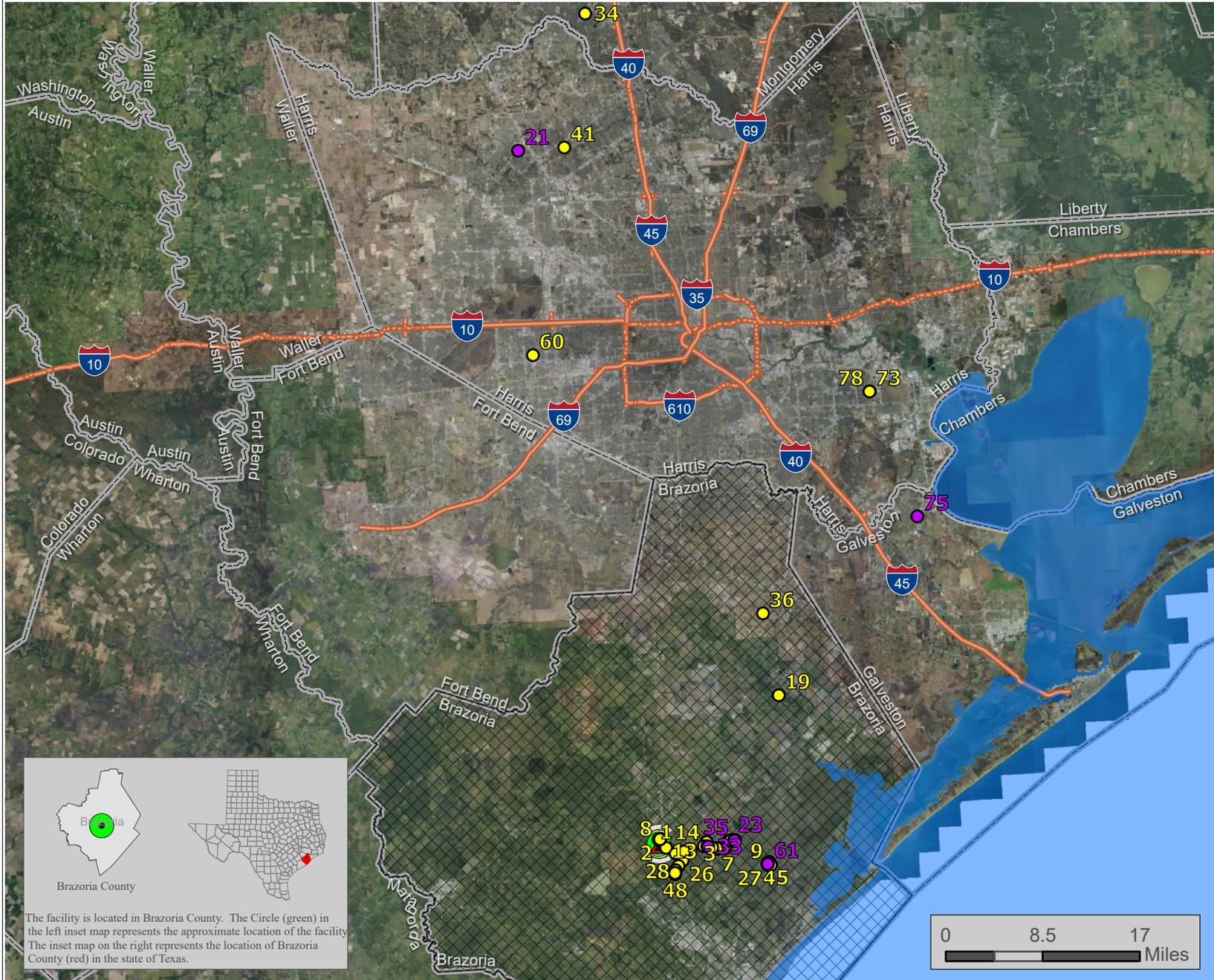
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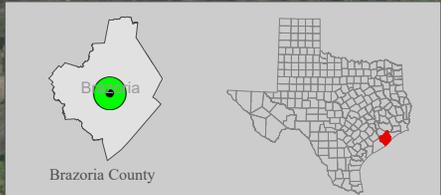
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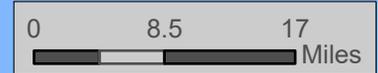
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MAILING LIST
Undine Texas Environmental, LLC
TCEQ Docket No. 2023-0163-MWD; TPDES Permit No. WQ0016046001

FOR THE APPLICANT

Peter T. Gregg, Gregg Law PC
910 West Avenue, Suite 3
Austin, Texas 78701

Jeff Goebel
Undine Texas Environmental, LLC
17681 Telge Road
Cypress, Texas 77429

Levi Love, P.E.
L Squared Engineering
3307 West Davis Street, Suite 100
Conroe, Texas 77304

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Kathy Humphreys, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711
Kathy.humphreys@tceq.texas.gov

Jose Alfonso Martinez, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division, MC-148
P.O. Box 3087
Austin, Texas 78711
Jose.martinez@tceq.texas.gov

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711
pep@tceq.texas.gov

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Garrett T. Arthur, Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711
Garrett.arthur@tceq.texas.gov

FOR ALTERNATIVE DISPUTE RESOLUTION
via electronic mail:

Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711
Kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK
via eFilings:

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

INTERESTED PERSONS
See attached list.

Stacy L Adams
Ste 408A
111 E Locust St
Angleton TX 77515-4642

Ronnie Gene Augry
6138 County Road 288
Angleton TX 77515-7816

Terri Bailey
2530 Bayou Dr
Angleton TX 77515-9120

Jamie Ballaurd
1910 County Road 220
Angleton TX 77515-8289

Beverly H Barnhart
614 County Road 605
Angleton TX 77515-7667

Misty Bays
1925 Fairway Dr
Angleton TX 77515-7366

Brandy Bell
614 Port Rd
Angleton TX 77515-8372

Candice Berg
2005 Fairway Dr
Angleton TX 77515-9383

J M Besser
PO Box 530
Pearland TX 77588-0530

Mike Besser
2903 Saxton Ct
Pearland TX 77581-4833

Gary Billingsley
12022 FM 523
Angleton TX 77515-8587

Debbie Bingham
4419 Zelsky Rd
Freeport TX 77541-7916

Todd Blanchard
102 Annette Ct
Angleton TX 77515-8619

Shane Bonnot
308 Forest Dr
Lake Jackson TX 77566-4611

Dorothy Boomhower
404 Port Rd
Angleton TX 77515-9392

The Honorable Steve M Boykin
City Of Richwood Texas
1800 Brazosport Blvd N
Richwood TX 77531-2808

Steve M Boykin
102 W Mahan St
Richwood TX 77531-2800

Patsy Brandt
1283 County Road 687
Angleton TX 77515-8679

Greg Brewer Jr
6442 County Road 390
Alvin TX 77511-8327

Lisa Brewer
175 Garth St
Freeport TX 77541-9683

Deryll Mark Broaddus
345 Redfish Dr
Freeport TX 77541-7995

Sheryl Broaddus
345 Redfish Dr
Freeport TX 77541-7995

Donald Brown
723 Port Rd
Angleton TX 77515-8375

Brennan Browning
1925 Fairway Dr
Angleton TX 77515-7366

Kevin Buchanan
2060 County Road 220
Angleton TX 77515-8641

Kristin Bulanek
PO Box 504
Danbury TX 77534-0504

Evan W Burris
39 Trout Ln
Freeport TX 77541-7914

Mary K Burris
39 Trout Ln
Freeport TX 77541-7914

James Byrd
509 Sims Dr
Angleton TX 77515-5117

Marsha Byrd
509 Sims Dr
Angleton TX 77515-5117

Ryan Cade
Ste 408A
111 E Locust St
Angleton TX 77515-4642

Ryan Cade
620 Brit Bailey Blvd
Angleton TX 77515-8537

Kathy Cagel
2027 County Road 220
Angleton TX 77515-8656

Mark Cameron
PO Box 3431
Freeport TX 77542-1631

Joan Ellen Carlson
638 Griffin Dr
Freeport TX 77541-9685

Cassie Claman
730 Riverside Dr
Angleton TX 77515-9118

Adam Contreras
2719 Bayou Dr
Angleton TX 77515-9125

Adam Contreras
1218 Lindfield Ln
Houston TX 77073-1325

Renee Cooper
3 Hollychase St
Richwood TX 77531-2024

Rickie Cortese
214 County Road 454A
Angleton TX 77515-8663

Monta Cothron
75 Annette Ct
Angleton TX 77515-8125

Walter Cothron
75 Annette Ct
Angleton TX 77515-8125

Matt Covey
781 County Road 687
Angleton TX 77515-9673

Carole Cravinho
2304 Messina Dr
Pearland TX 77581-5332

Mary Spears Crosby
1535 Fairway Dr
Angleton TX 77515-9379

Gabriella Cuellar
216 County Road 201
Angleton TX 77515-7632

Jacqueline Dunn Cunningham
111 Riverside Dr
Angleton TX 77515-9107

Betsy & Glenn David
141 Riverside Dr
Angleton TX 77515-9107

Betsy David
141 Riverside Dr
Angleton TX 77515-9107

Glenn David
141 Riverside Dr
Angleton TX 77515-9107

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Angleton TX 77515-7366

Aubree Davidson
1925 Fairway Dr
Angleton TX 77515-7366

Jimmy Davidson
1925 Fairway Dr
Angleton TX 77515-7366

Jerry Lee Davis Jr
803 Port Rd
Angleton TX 77515-9397

Juan L Davis
807 Port Rd
Angleton TX 77515-9397

Randy A Davis
22509 Murrell Rd
Hockley TX 77447-3015

Dianne Denham
431 Tamarind St
Lake Jackson TX 77566-3141

Mary Alicia Deskins
597 County Road 605
Angleton TX 77515-7666

Jose Diaz
210 Audubon Woods Ct
Richwood TX 77531-2235

Justin Duke
3402 County Road 197
Alvin TX 77511-1726

Karen & Michael Richard Durham
3003 Bayou Dr
Angleton TX 77515

Karen & Michael Richard Durham
15806 Deerpath Ct
Tomball TX 77377

Michael Richard Durham
15806 Deerpath Ct
Tomball TX 77377-8540

Michael Wayne Durham
2827 Bayou Dr
Angleton TX 77515-9127

Michael Wayne Durham
31434 Bayou Bnd
Richwood TX 77515-7091

Stephanye Durham
31434 Bayou Bnd
Richwood TX 77515-7091

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2827 Bayou Dr
Angleton TX 77515-9127

David Lee Durham
16511 Dunleith Cir
Cypress TX 77429-4832

Diana Duval
227 Riverside Dr
Angleton TX 77515-9109

Felecia Duval
2535 Bayou Dr
Angleton TX 77515-9121

R P Dwire
3130 N Fairway Dr
Angleton TX 77515-8162

Lauren Eager
15863 Menlow Bend Dr
Humble TX 77396-5114

Charles Edwards
2003 Fairway Dr
Angleton TX 77515-9383

Kathy Edwards
2003 Fairway Dr
Angleton TX 77515-9383

Richard Elliott
411 Bayou Dr
Freeport TX 77541-6633

Jan Elza
1847 Fairway Dr
Angleton TX 77515-7373

Steven Elza
1847 Fairway Dr
Angleton TX 77515-7373

George A Erchinger
6 Trout Ln
Freeport TX 77541-7914

Rodrigo Escalante
2918 Oakwood Shores Dr
Richwood TX 77515-7096

Rory Escalante
2918 Oakwood Shores Dr
Richwood TX 77515-7096

Genevie Estrada Pee
12130 Annette Rd
Angleton TX 77515-8107

Mamie Estrada
12203 Annette Rd
Angleton TX 77515-9321

Gerard Evans
723 Port Rd
Angleton TX 77515-8375

Sherrie Felder
32 Trout Ln
Freeport TX 77541-7914

Clint Fewell
4515 Trammel St
Freeport TX 77541-7931

Dana Fitze
504 Edgewater St
Richwood TX 77531-2021

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Clute TX 77531-2021

John Fitze
504 Edgewater St
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Dana & John Fitze
504 Edgewater St
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Eric Foerster
City Of Richwood
1800 Brazosport Blvd N
Richwood TX 77531-2808

Tammy Fojtik
2527 Bastrop St
Angleton TX 77515

Jim Follett
818 County Road 605
Angleton TX 77515-7671

David & Sherri Fossati
1259 Fairway Dr
Angleton TX 77515-8710

Sherri Fossati
1259 Fairway Dr
Angleton TX 77515-8710

Garry Gann
395 Redfish Dr
Freeport TX 77541-7995

Aaron Garcia
614 Compass Rd
Angleton TX 77515-9104

Kirsten Garcia
1800 Brazosport Blvd N
Richwood TX 77531-2808

Jay Garner
815 County Road 504B
Angleton TX 77515

Kimberley Garner
100 Concord Ave
Clute TX 77531-4754

Chuck Gentry
459 County Road 23
Freeport TX 77541

Eddie Gene Gentry
6201 County Road 288
Angleton TX 77515-8658

Sonya Graham
124 Edgewater St
Richwood TX 77531-2014

Peter T Gregg
910 West Ave. Ste 3
Austin TX 78701-2231

April Hanes
350 County Road 605
Angleton TX 77515-7661

Jason K Hanes
350 County Road 605
Angleton TX 77515-7661

Dylan Harley
9140 Highway 6 N
Houston TX 77095-2478

Rhonda Harley
2731 Bayou Dr
Angleton TX 77515-9125

Rhonda & Stanley Harley
2731 Bayou Dr
Angleton TX 77515

Stanley Harley
2731 Bayou Dr
Angleton TX 77515-9125

Greg Hawkins
325 Riverside Dr
Angleton TX 77515-9111

Greg & Lori Hawkins
325 Riverside Dr
Angleton TX 77515-9111

Gregory A Hawkins Jr
114 Dudd St
Angleton TX 77515-8380

Gregory A Hawkins
114 Dudd St
Angleton TX 77515-8380

Lori Hawkins
325 Riverside Dr
Angleton TX 77515-9111

Mark Henderson
17402 Cathedral Pines Dr
Humble TX 77346-3908

David & David Henson
25 W Southfork Pines Cir
The Woodlands TX 77381-2543

David & Stefanie Henson
25 W Southfork Pines Cir
The Woodlands TX 77381-2543

Steven Henson
3115 N Fairway Dr
Angleton TX 77515-8593

Andrew Michael Heston
Brazoria County
111 E Locust St Ste 408A
Angleton TX 77515-4642

Cuthrell Shane Hicks
1908 Tracy Lynn Ln
Alvin TX 77511-3830

Shane Hicks
4535 County Road 459B
Freeport TX 77541-9665

Marie Hillman
301 Appaloosa Run
Liberty Hill TX 78642-3862

Bridgett L Hines
9 Robinhood Ln
Richwood TX 77531-2026

Michael J Hines
9 Robinhood Ln
Clute TX 77531-2026

Michael L Hines
979 County Road 687
Angleton TX 77515-8685

Michael Lee Holt
1501 Fairway Dr
Angleton TX 77515-9379

Tim Holt
509 Hampton Rd
Angleton TX 77515-2042

Marbella Hooper
823 Port Rd
Angleton TX 77515-9397

Dianne House
2325 Palm Cir
Seabrook TX 77586-1677

Rebecca Howell
RR 8 Box 527
Angleton TX 77515-9494

The Honorable Joan Huffman
State Senator
The Senate Of Texas District 17
PO Box 12068
Austin TX 78711-2068

The Honorable Joan Huffman
State Senator
The Senate Of Texas District 17
PO Box 541774
Houston TX 77254-1774

Nikia N Jacobs
104 Country Rd
Angleton TX 77515-9457

Jarrod Jamail
120 S FM 154
Muldoon TX 78949-5138

Mike Johnson
602 Magnolia St
Lake Jackson TX 77566-5409

Dennis Jones
155 Garth St
Freeport TX 77541-9683

Marcus Jones
542 Riverside Dr
Angleton TX 77515-9114

Monica Jones
542 Riverside Dr
Angleton TX 77515-9114

Edwin Keonitzer
291 County Road 687
Angleton TX 77515-8695

Frances Anne Keonitzer
291 County Road 687
Angleton TX 77515-8695

Richard L Kerr Jr
8306 Bon Hill Ct
Spring TX 77379-6857

Lauren Lacount
2000 Brazosport Blvd N
Richwood TX 77531-2606

Hugh Landon
558 County Road 605
Angleton TX 77515-7665

Summer Lapointe
318 Cotton St
Freeport TX 77541-9711

Lonnie Laqua
217 Bastrop St
Angleton TX 77515-4105

Travis Laqua
5233 Maple St
Bellaire TX 77401-4807

Julia Lewis
5935 County Road 288
Angleton TX 77515-8666

David Linder
Brazoria County Precinct 4
Ste 408A
111 E Locust St
Angleton TX 77515-4642

David Linder
Brazoria County Precinct 4
Ste 110
121 N 10th St
West Columbia TX 77486-1402

David Linder
316 Jamison Dr
Angleton TX 77515-9451

Timothy Lopez
2711 Bayou Dr
Angleton TX 77515-9125

Alli Lowe
Unit 5108
6300 Seawall Blvd
Galveston TX 77551-2219

Howard Loyacano
5415 H And R Rd
Brazoria TX 77422-7923

Barbara Marino
417 Redfish Dr
Freeport TX 77541-7997

Colton Marino
417 Redfish Dr
Freeport TX 77541-7997

Paul Marino
417 Redfish Dr
Freeport TX 77541-7997

Addie Marlin
614 Griffin Dr
Freeport TX 77541-9685

Vanessa Marlin
622 Griffin Dr
Freeport TX 77541-9685

Reagan Meredith Marshall
389 Redfish Dr
Freeport TX 77541-7995

Kennedy McConnell
2546 Bayou Dr
Angleton TX 77515-9120

Irma McKinney
12 Sherwood Dr
Richwood TX 77531-2041

Kevin McKinney
12 Sherwood Dr
Richwood TX 77531-2041

John Mendoza
1702 Skinner St Apt 4108
Freeport TX 77541-3662

James A Meyer
PO Box 487
White Oak TX 75693-0487

James Arthur Meyer
150 Basil
Livingston TX 77351-4761

The Honorable Mayes Middleton
State Representative
Texas House Of Representatives
District 23
PO Box 2910
Austin TX 78768-2910

Doug Miller
339 Redfish Dr
Freeport TX 77541-7995

Lauren Milliorn
214 Riverside Dr
Angleton TX 77515-9108

Ernestina Mook
583 County Road 687
Angleton TX 77515-8689

Jaime Moreno
28 Colony Sq
Angleton TX 77515-3645

Rosanna Moreno
28 Colony Sq
Angleton TX 77515-3645

Janie Morran
627 Port Rd
Angleton TX 77515-8373

Angela Morris
523 Oak Dr
Lake Jackson TX 77566-4218

Lisa Morris
69 Kirby Dr
West Columbia TX 77486

Alyssa Michelle Moyle
4606 W FM 1462
Rosharon TX 77583-7508

Gilner Murrell
1215 Fairway Dr
Angleton TX 77515-8710

Ashley Nesrsta
804 Port Rd
Angleton TX 77515-9396

Justin David Nesrsta
804 Port Rd
Angleton TX 77515-9396

Samantha Newton
1215 Fairway Dr
Angleton TX 77515-8710

Jim North
Ste J Box 243
117 Highway 332 W
Lake Jackson TX 77566-4023

Randy Nugent
517 Edgewater St
Richwood TX 77531-2020

Michael K O'Brien Jr
609 Orangewood Dr
Conroe TX 77302-1179

Debra Oliver
221 County Road 839
Angleton TX 77515-8601

Douglas Owens
804 Akers St
Angleton TX 77515-5611

Cindy Parker
521 Edgewater St
Clute TX 77531-2020

Donald Payne
Ste 408A
111 E Locust St
Angleton TX 77515-4642

Gerald Peliter
2045 County Road 220
Angleton TX 77515-8656

James W Perouty
419 Redfish Dr
Freeport TX 77541-7997

Mattie Moore Perouty
419 Redfish Dr
Freeport TX 77541-7997

James Pfeffer
2827 Bayou Dr
Angleton TX 77515-9127

Amy Phillips
507 Bayou Woods Dr
Angleton TX 77515

James & Shirley Phillips
507 County Road 687
Angleton TX 77515-8689

Kenneth M Plato
415 Redfish Dr
Freeport TX 77541-7997

David P Polasek
12011 County Road 596
Angleton TX 77515-8252

Patti Lynn Polasek
12011 County Road 596
Angleton TX 77515-8252

Lisa Pospisil
12007 Annette Rd
Angleton TX 77515-8106

Emil E Pihoda
313 Riverside Dr
Angleton TX 77515-9111

Javan Pruett
3130 N Fairway Dr
Angleton TX 77515-8162

Bob & Melody Purnell
12006 County Road 596
Angleton TX 77515-8251

Melody Purnell
12006 County Road 596
Angleton TX 77515-8251

Robert Purnell
12006 County Road 596
Angleton TX 77515-8251

Kenneth Purswell
12022 Waldemar Dr
Houston TX 77077-4957

Kenneth R Purswell
12027 Waldemar Dr
Houston TX 77077-4956

Kyle Purvis
32226 Bayou Bnd
Richwood TX 77515-7078

Helen Raborn
12238 Annette Rd
Angleton TX 77515-8108

Brad Reich
310 Edgewater St
Richwood TX 77531-2017

Bruno Reich
403 Edgewater St
Clute TX 77531-2018

Gilbert Reyes
153 Houston St
Angleton TX 77515-4136

Ruben Reyes
7 Robinhood Ln
Richwood TX 77531-2026

Barry T Reynolds
45 Trout Ln
Freeport TX 77541-7914

Lawana Reynolds
45 Trout Ln
Freeport TX 77541-7914

Lawana J Reynolds
8702 Andante Dr
Houston TX 77040-2541

Lisa Ridenour
4722 County Road 459D
Freeport TX 77541-7932

Cindy Roberts
17402 Cathedral Pines Dr
Humble TX 77346-3908

Gene Roberts
228 E Hospital Dr
Angleton TX 77515-4114

Eunice Roulston
4545 County Road 227
Freeport TX 77541-9662

Bill Joseph Russo III
367 Redfish Dr
Freeport TX 77541-7995

Jennifer Russo
367 Redfish Dr
Freeport TX 77541-7995

Bill Joseph Russo III
376 Redfish Dr
Freeport TX 77541-7994

Frank Rutledge
722 Port Rd
Angleton TX 77515-8374

William Sawyer
201 Smilie Rd
Angleton TX 77515-2137

Raymond Schiller
513 County Road 698D
Angleton TX 77515-7896

Frances Schultz
642 County Road 605
Angleton TX 77515-7667

L M Sebesta Jr
Ste 102A
111 E Locust St
Angleton TX 77515-4642

Michael Shapley
803B Port Rd
Angleton TX 77515-9397

Mary Shine
Brazoria Co Criminal District Attorney's
Office
111 E Locust St Ste 408A
Angleton TX 77515-4642

David Shockley
623 Port Rd
Angleton TX 77515-8373

Gaye Shockley
623 Port Rd
Angleton TX 77515-8373

Jimmie Silvers
31410 Bayou Bnd
Richwood TX 77515-7091

Kenneth Sluis
32362 Bayou Bnd
Richwood TX 77515-7080

Justin Sparkman
140 Dove Trl
Richwood TX 77531-2248

James Stockman
12113 FM 523
Angleton TX 77515-2001

Lyn Tigner Stockman
12113 FM 523
Angleton TX 77515-2001

Josh Strawn
33219 Blue Marlin Dr
Richwood TX 77515-7290

Linda S Strickland
726 Riverside Dr
Angleton TX 77515-9118

Timothy Strickland
726 Riverside Dr
Angleton TX 77515-9118

Linda & Timothy Strickland
726 Riverside Dr
Angleton TX 77515-9118

Tyler Strickland
1997 Kingston Cv
League City TX 77573-4988

Dixie Strotha
12007 Annette Rd
Angleton TX 77515-8106

Ed Stuckman
PO Box 1894
Angleton TX 77516-1894

The Honorable Larry Taylor
State Senator
The Senate Of Texas District 11
PO Box 12068
Austin TX 78711-2068

The Honorable Ed Thompson
State Representative
Texas House Of Representatives
District 29
PO Box 2910
Austin TX 78768-2910

The Honorable Ed Thompson
State Representative
Texas House Of Representatives
District 29
2205 Broadway St
Pearland TX 77581-6403

Kevin Tilley
371 Redfish Dr
Freeport TX 77541-7995

Gerald Treybig
730 Riverside Dr
Angleton TX 77515-9118

Jane Tumlinson
30 Trout Ln
Freeport TX 77541-7914

Pat Tumlinson
30 Trout Ln
Freeport TX 77541-7914

The Honorable Cody Thane Vasut
State Representative
Texas House Of Representatives
District 25
222 N Velasco St Ste 25
Angleton TX 77515-4566

The Honorable Cody Thane Vasut
State Representative
Texas House Of Representatives
District 25
PO Box 2910
Austin TX 78768-2910

Bruce Vincent
403 Redfish Dr
Freeport TX 77541-7997

Bill Waite
131 Bastrop Bayou Dr
Angleton TX 77515-8371

Janet Waite
131 Bastrop Bayou Dr
Angleton TX 77515-8371

Billy Joe Walcik
913 Oak Ridge Dr
Angleton TX 77515-9254

Donna Walker
119 Redfish Dr
Freeport TX 77541-7907

Janie Walthall
706 Griffin Dr
Freeport TX 77541-9499

Mark Watts
149 Legend Ln
Angleton TX 77515-7558

Hunter Weaver
11 Trout Ln
Freeport TX 77541-7914

Mark A Webb
32811 Amberjack Dr
Richwood TX 77515-7361

Brandy Weidner
139 County Road 458D
Angleton TX 77515

James Wells
2711 Bayou Dr
Angleton TX 77515-9125

Paul Wells
3410 E FM 2237
Muldoon TX 78949-5107

Constance Westfall
473 County Road 687
Angleton TX 77515-8691

Norman White
107 E Sandpiper Rd
Angleton TX 77515

James Wiegel
32026 Bayou Bnd
Richwood TX 77515-7074

Bret Willingham
31 Trout Ln
Freeport TX 77541-7914

Justin Willis
104 Country Rd
Angleton TX 77515-9457

Reverend Robert V Willis III
711 County Road 687
Angleton TX 77515-9673

Mickye Michelle Wilson
685 County Road 687
Angleton TX 77515-8687

Nancy Wollam
222 N Velasco St
Angleton TX 77515-4566

Linize Womack
2003 Fairway Dr
Angleton TX 77515-9383

Glen M Woosley III
1320 Glenview Ln
Angleton TX 77515-3633

Alex Yanez
354 Redfish Dr
Freeport TX 77541-7994

Carole J Zieber
3418 Surrey Ln
Deer Park TX 77536-5292

Charles & Tammi Zieber
2515 Bayou Dr
Angleton TX 77515-9121

Charles E Zieber III
3112 Misty Shore Dr
League City TX 77573-5989

Chris Zieber
239 Riverside Dr
Angleton TX 77515-9109

Heather Zieber
3112 Misty Shore Dr
League City TX 77573-5989

James K Zieber
7248 Avenue L 1/2
Santa Fe TX 77510-9527

Tammi Zieber
2515 Bayou Dr
Angleton TX 77515-9121

Chris Zieber
243 Riverside Dr
Angleton TX 77515-9109

Jodi Ziehl
317 County Road 201
Angleton TX 77515-7635

Carole & Riley Zlebis
3418 Surrey Ln
Deer Park TX 77536-5292

Harper L Zlebis
3418 Surrey Ln
Deer Park TX 77536-5292