

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

APPLICATION BY UNDINE TEXAS ENVIRONMENTAL, LLC FOR NEW TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT NO. WQ0016046001	§ § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**PROTESTANT BRAZORIA COUNTY'S
EXCEPTIONS TO PROPOSAL FOR DECISION**

COMES NOW Brazoria County (County), Protestant in this matter, files this Exceptions to the Proposal for Decision and, in support thereof, would show the following:

I. INTRODUCTION

The County excepts to the Administrative Law Judge's (ALJ) recommended actions, proposed Findings of Fact, and proposed Conclusions of law. The proposed Texas Pollution Discharge Elimination Program (TPDES) permit that is the subject of this proceeding would allow Undine Texas Environmental, LLC (Applicant) to discharge a daily average flow of 250,000 gallons per day of treated wastewater (Draft Permit) is not protective of water quality, aquatic life, wildlife, and livestock, or human health.

II. EXCEPTIONS AND CORRECTIONS

a. Exceptions to the PFD's analysis and recommendations regarding whether the Draft Permit is protective of surface water quality, and aquatic life, wildlife, and livestock.

The County has provided sufficient evidence that the Draft Permit is not protective of surface water quality, aquatic life, wildlife, and livestock. TCEQ's utilized inaccurate water modeling assumptions in its QUAL-TX modeling that will result in dissolved oxygen levels in the receiving waters lower than what is predicted in TCEQ's modeling results. TCEQ did not model information specific to Angleton Drainage District Ditch No. 7 and Angleton Drainage District

Ditch No. 22 (Ditches) themselves and instead used standard hydraulic coefficients for stream dimensions, velocity, and flow characteristics of a “typical” Texas stream, which is assumed to be a stream with a flow 6.8 meters wide and 6 inches deep. (ED-XL-1, Page 10, lines 18-20 (Bates 33)) (Tr. 40:10-12 (Ross)). These standard hydraulic coefficients assume an unreasonably wide and shallow effluent flow in the receiving water and thus provide a “gross over-prediction of water re-aeration” that will allow dissolved oxygen levels from the proposed discharge. (County Exhibit 1, Page 16, lines 18-20; Page 25, line 10). TCEQ has not stated that it was prohibited by any statute, regulation, or policy from requesting additional site-specific data from an Applicant. However, TCEQ’s own Water Quality Assessment Team Methods for Analyzing Dissolved Oxygen in Freshwater Streams Using an Uncalibrated QUAL-TX Model (SOPs) recognizes that the actual hydraulic depiction of the receiving stream would have a “large and direct” bearing on water modeling results. (Tr. 92: 9-25; 95: 3-5 (Lu) ED-XL-6, Page 2 (Bates 62)). TCEQ choose to disregard this information in the SOPs, and instead used assumptions as modeling inputs to predict the impact of the proposed discharge on the receiving waters, even though such inputs grossly differ from the site-specific characteristics of the receiving waters.

In the Proposal for Decision (PFD), the ALJ stated that the stream characteristics of 6.8 meters wide and 6 inches deep were not used as inputs to TCEQ’s QUAL-TX model because the TCEQ “did not utilize any site specific information when assessing” the Application. PFD at 13-14. This is an inaccurate statement because 6.8 meters wide and 6 inches deep are the assumption used by TCEQ in QUAL-TX modeling as that of a “typical stream.” It is the use of these inaccurate assumptions as inputs that grossly differ from the site characteristics – even when TCEQ could have requested site-specific information to use as inputs – that the County has objected to.

Further, the County has provided evidence that using the above general assumptions relating to the receiving waters in the QUAL-TX modeling resulting in decreased dissolved oxygen concentrations, as well as failing to include enterococci as an indicator bacteria, will result in a violation Texas Surface Water Quality Standards (TSWQS) in 30 TAC §§ 307.5 and 307.7. The ALJ, in deferring to TCEQ's flawed water quality modeling and analysis, failed to take into account the actual impact of the proposed discharge on the receiving waters. The County has provided clear evidence utilizing actual site-specific data of the receiving waters that the proposed discharge will degrade the water quality of the receiving waters in violation of state requirements – the TSWQS.

Accordingly, the County excepts to and recommends rejection of Findings of Fact 31, which states that:

“31. The Draft Permit's proposed permit limits are in accordance with TCEQ standard operative procedures and are sufficiently protective of water quality and uses of the waters in the state.”

The County excepts to and recommends correction of Findings of Fact 28, as follows:

28. “TCEQ did not utilized proper default hydraulic assumptions in its water quality modeling analysis, ~~absent any site-specific data.~~”

The County excepts to and recommends rejection of Conclusion of Law 7, which states that:

“7. Protestants did not rebut the prima facie demonstration by demonstrating that one or more provisions in the Draft Permit violate a specifically applicable state or federal requirement that relates to a matter referred by TCEQ. Tex. Gov't Code § 2003.047(i-2); 30 Tex. Admin. Code § 80.17(c).”

The County additionally excepts to and recommends correction of Conclusions of Law 8 and 13 as follows:

“8. The Draft Permit is not protective of water quality and the existing uses of the receiving water ~~in accordance with~~ in violation of applicable TSWQS.”

“13. The Draft Permit is not protective of aquatic life, wildlife, and livestock in the immediate vicinity of the Facility and discharge route.”

The County also excepts to and recommends rejection of Findings of Fact 29, 30, and 32, which state that:

“29. The Tier 1 antidegradation review determined that existing water quality uses would not be impaired.”

“30. A Tier 2 antidegradation review determined that no significant degradation of water quality is expected in Ditch 22’s tidal reach and Bastrop Bayou Tidal, which have been identified as having high aquatic uses.”

“32. The County and Mr. Autry (Collectively, Protestants) did not present evidence that the Draft Permit violates a specifically applicable state or federal requirement.”

b. Exceptions to the PFD’s analysis and recommendations regarding whether the Draft Permit is protective of groundwater and human health.

The County also provided sufficient evidence to rebut the presumption that the Draft Permit is protective of groundwater and human health.

TCEQ incorrectly relies on an unsupported assumption that the protection of surface water is adequate to protect underlying groundwater. However, the County has rebutted this inaccurate presumption by providing evidence that pollutants, such as nitrate, would discharge into the underlying Chicot and Evangeline Aquifers, which are a drinking water source in the area. (County Exhibit 1, Page 24, lines 4-8 (Bates 27)(Tr. 49:3-8(Ross)). Such pollution of groundwater is a threat to human health because nitrate in groundwater can persist for years and causes a serious

and life-threatening condition in infants called methemoglobinemia, and is also linked to occurrences of colorectal, bladder and breast cancer, thyroid disease, and neural tube defects. (County Exhibit 1, Page 24, lines 8-9 (Bates 27); Page 25, lines 1-4 (Bates 28). TCEQ conducted no independent assessment of the impacts of the proposed discharge on groundwater and cannot make a determination that Draft Permit is protective of groundwater quality. The ALJ stated in the PFD that the County's testimony presented a "possibility" of contamination of groundwater without "site-specific data." PFD at 17. However, the County provided sufficient information to rebut the presumption that protection of surface water in the receiving water is protective of groundwater by successfully demonstrating that nitrates present in surface water are detrimental to groundwater quality. The County's testimony and evidence supports that the Draft Permit is not protective of groundwater quality, resulting in a threat to human health.

Accordingly, the County excepts to and recommend rejection of Findings of Fact 35, which states that:

"35. A TPDES permit drafted to be protective of surface receiving waters will be protective of groundwater in the vicinity."

The County excepts to and recommends correction of Conclusions of Law 5, 11, and 12, as follows:

"5. Applicant's filing of the Administrative Record did not established a prima facie case that: (1) the Draft Permit meets all state and federal legal and technical requirements; and (2) a permit, if issued consistent with the Draft Permit, would protect human health and safety, the environment, and physical property. Tex. Gov't Code § 2003.047(i-1); 30 Tex. Admin. Code § 80.17(c)(1)."

"11. The Draft Permit is not protective of groundwater in the area."

“12. The Draft Permit is not protective of human health of residents in the immediate vicinity of the Facility and the immediate discharge route.”

The County excepts to and recommends correction of Conclusions of Law 14, as follows:

“14. The Application should be ~~granted~~ denied, ~~and the Draft Permit issued.~~”

III. Conclusion

The County respectfully requests that the Commission grant its exceptions and recommend the PFD with the corrections as set out above. The County additionally requests any other relief to which it is entitled.

Respectfully submitted,

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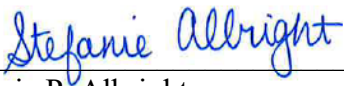
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CERTIFICATE OF SERVICE

I hereby certify by my signature below that on this 27th day of February 2024, a true and correct copy of the above and foregoing document was forwarded via e-mail or regular mail to the parties on the Service List.



Stefanie P. Albright