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STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza, CLERK

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ADMINISTRATIVE HEARINGS
Kevin Garza, CLERK

**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**

PROTESTANT RONNIE AUTRY'S EXCEPTIONS TO PROPOSAL FOR DECISION

COMES NOW Ronnie Gene Autry (Mr. Autry), the Individual Protestant in this matter, and files this Exceptions to the Proposal for Decision and, in support thereof, would show the following:

I. INTRODUCTION

Mr. Autry excepts to the Administrative Law Judge's (ALJ) recommended actions, proposed Findings of Fact, and proposed Conclusions of Law. If granted, the ALJ's recommended decision on the proposed Texas Pollution Discharge Elimination Program (TPDES) permit would allow Undine Texas Environmental, LLC (Applicant) to discharge a daily average flow of 250,000 gallons per day of treated wastewater (Draft Permit) which is not protective of water quality, aquatic life, wildlife, and livestock, or human health. This discharge would directly affect Mr. Autry and his family, whose property is located just downstream of the proposed discharge point.

II. EXCEPTIONS

- a. The PFD incorrectly finds that the Draft Permit is protective of surface water quality (referred issue A), and aquatic life, wildlife, and livestock (referred issue C).**

Mr. Autry in conjunction with the County's experts have provided sufficient evidence that the Draft Permit is not protective of surface water quality, or aquatic life, wildlife, and livestock.

As Mr. Autry testified, the ditches in question (Austin Drainage District Ditch No. 7 and Austin Drainage District Ditch No. 22) contain persistent pools year-round and are used for fishing, recreation, domestic animals, and livestock by the Autry family and other citizens. PFD at Pgs. 9-10. As shown through the County's expert Dr. Ross, the TCEQ did not use accurate water modeling assumptions in its QUAL-TX model or assumptions specific to the two ditches, which resulted in dissolved oxygen levels in the receiving waters lower than what is predicted in TCEQ's modeling results. As a result, the TCEQ's recommended Draft Permit will not protect the Autry's surface water quality or the lives of the fish, wildlife, and livestock on the Autry property and further downstream.

Dr. Ross presented credible evidence that the assumed standard hydraulic coefficients for a typical Texas stream do not apply to the bodies of water in Mr. Autry's yard and along the discharge route. The standard coefficients are unreasonably wide and shallow compared to the actual receiving water bodies, and therefore over-predict the water re-aeration and will result in low dissolved oxygen levels from the proposed discharge. *See* County Exhibit 1, Page 16, lines 18-20; Page 25, line 10). The ALJ states that the TCEQ does not require the Applicant to submit site-specific data. PFD at Pg. 12. However, when faced with the site-specific evidence provided by both the protestants that clearly render the standard coefficients incorrect, the ALJ improperly disregarded the protestants' evidence to conclude that the Draft Permit will be protective of water quality based off the standard coefficients of a typical Texas stream, rather than the actual water bodies.

Further, Mr. Autry disagrees with the ALJ's conclusion that the characteristics of flow as 6.8 meters wide and 5 inches deep "were not inputs into the model, as Dr. Lu testified that she did not utilize any site-specific information when assessing the Application." PFD at Pg. 14.

Respectfully, the listed characteristics were the inputs into the model, because they are the inputs used for a typical Texas stream. *See* ED-XL-1, Page 10, lines 18-20 (Bates 33)) (Tr. 40:10-12 (Ross)). The TCEQ did not use site specific characteristics that actually reflect the receiving bodies on Mr. Autry's property, and because of that, the use of these inaccurate assumptions has resulted in a Draft Permit that is neither protective of surface water quality (referred issue A) nor protective of the aquatic life, wildlife, and livestock on Mr. Autry's property and downstream (referred issue C). Mr. Autry and the County's experts therefore provided sufficient evidence to rebut these two presumptions.

Mr. Autry and the County's expert provided evidence that using correct assumptions in the modeling and not including enterococci as an indicator bacteria resulted in a Draft Permit that is in a violation Texas Surface Water Quality Standards (TSWQS) in 30 TAC §§ 307.5 and 307.7.

Therefore, Mr. Autry excepts to and recommends rejection of Finding 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."

Mr. Autry excepts to and recommends correction of Finding 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.~~"

Mr. Autry 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)."

Mr. Autry excepts to and recommends correction of Conclusions of Law 8, 13, and 14 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.”

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

Mr. Autry 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. The PFD incorrectly finds that the Draft Permit is protective of groundwater (referred issue A) and human health (referred issue B).

Mr. Autry and the County’s expert provided sufficient evidence to rebut the presumption that the Draft Permit is protective of groundwater and human health. As explained in his testimony, Mr. Autry has two groundwater wells that are used for household purposes and located in close proximity to the proposed discharge point. *See* PFD at Pgs. 14-15. The Executive Director’s witness Dr. Wallace testified that the TCEQ did not make an independent determination about the impact of groundwater, but then somehow inexplicably conclude that the Draft Permit will be

protective of the groundwater and Mr. Autry's family despite the fact that the ED's witness admitted the agency did not look at it. *See* PFD at Pg. 17.

The TCEQ's assumption that the protection of surface water is adequate to protect underlying groundwater is not supported, and the County's expert Dr. Ross rebutted this presumption by providing evidence that pollutants, such as nitrate, would discharge into the underlying aquifers, which are a drinking water source in the area and specifically a water source for the Autry's. County Exhibit 1, Page 24, lines 4-8 (Bates 27) (Tr. 49:3-8) (Ross). Dr. Ross explained how those pollutants are a threat to human health and the diseases that the pollutants have been linked to. County Exhibit 1, Page 24, lines 8-9 (Bates 27); Page 25, lines 1-4 (Bates 28). Despite this clear threat to the Autry family and other citizens, the 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. Mr. Autry's testimony in conjunction with the County's evidence supports that the Draft Permit is not protective of groundwater quality, and the diminished groundwater quality could result in a threat to human health.

Accordingly, Mr. Autry excepts to and recommend rejection of Finding 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.”

Mr. Autry 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.”

Mr. Autry again excepts to and recommends correction of Conclusion of Law 14, as follows:

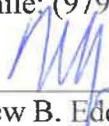
“14. The Application should be ~~granted~~ denied, ~~and the Draft Permit issued.~~”

III. Conclusion

Mr. Autry respectfully requests that the Commission grant its exceptions and recommend the PFD with the corrections as set out above, as well as any other relief to which it is entitled.

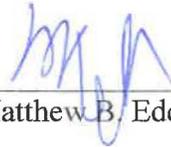
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify by my signature below that on this 27th day of February 2023, 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.

By:  _____
Matthew B. Edquist

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