

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 16, 2022

TO: All interested persons.

RE: Undine Texas Environmental, LLC
TPDES Permit No. WQ0016046001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter are instructions to view the Executive Director's Response to Public Comment (RTC) on the Internet. Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov. A complete copy of the RTC (including the mailing list), complete application, draft permit and related documents, including public comments, are available for review at the TCEQ Central Office. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Angleton Library, 401 East Cedar Street, Angleton, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. The procedures for the commission's evaluation of hearing requests/requests for reconsideration are located in 30 Texas Administrative Code Chapter 55, Subchapter F. A brief description of the procedures for these two requests follows.

How to Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. Your hearing request must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (3) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: “I request a contested case hearing.”
- (4) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group;
 - (B) the comments on the application submitted by the group that are the basis of the hearing request; and
 - (C) by name and physical address one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization’s purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

Additionally, your request must demonstrate that you are an **“affected person.”** 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. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission’s decision on this application that were raised **by you** during the public comment period. The request cannot be based solely on issues raised in comments that you have withdrawn.

To facilitate the commission’s determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director’s responses to **your** comments that you dispute; 2) the factual basis of the dispute; and 3) list any disputed issues of law.

How to Request Reconsideration of the Executive Director’s Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director’s decision. A request for reconsideration should contain your name,

address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html or by mail to the following address:

Laurie Gharis, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the TCEQ's Alternative Dispute Resolution Program and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Public Education Program, toll free, at 1-800-687-4040.

Sincerely,

A handwritten signature in black ink that reads "Laurie Gharis". The signature is written in a cursive, flowing style.

Laurie Gharis
Chief Clerk

LG/mt

Enclosure

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT
for
Undine Texas Environmental, LLC
TPDES Permit No. WQ0016046001

The Executive Director has made the Response to Public Comment (RTC) for the application by Undine Texas Environmental, LLC for TPDES Permit No. WQ0016046001 available for viewing on the Internet. You may view and print the document by visiting the TCEQ Commissioners' Integrated Database at the following link:

<https://www.tceq.texas.gov/goto/cid>

In order to view the RTC at the link above, enter the TCEQ ID Number for this application WQ0016046001 and click the "Search" button. The search results will display a link to the RTC.

Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov.

Additional Information

For more information on the public participation process, you may contact the Office of the Public Interest Counsel at (512) 239-6363 or call the Public Education Program, toll free, at (800) 687-4040.

A complete copy of the RTC (including the mailing list), the complete application, the draft permit, and related documents, including comments, at the TCEQ Central Office in Austin, Texas. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Angleton Library, 401 East Cedar Street, Angleton, Texas.

MAILING LIST
for
Undine Texas Environmental, LLC
TPDES Permit No. WQ0016046001

FOR THE APPLICANT:

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

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087

Kathy Humphreys, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Jose Alfonso Martinez, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087

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 78711-3087

FOR THE CHIEF CLERK
via electronic mail:

Laurie Gharis, Chief Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

ADAMS , STACY L
STE 408A
111 E LOCUST ST
ANGLETON TX 77515-4642

AUGRY , MR RONNIE GENE
6138 COUNTY ROAD 288
ANGLETON TX 77515-7816

BAILEY , TERRI
2530 BAYOU DR
ANGLETON TX 77515-9120

BALLAURD , JAMIE
THE SPRING
1910 COUNTY ROAD 220
ANGLETON TX 77515-8289

BARNHART , BEVERLY H
614
614 COUNTY ROAD 605
ANGLETON TX 77515-7667

BAYS , MISS MISTY
1925 FAIRWAY DR
ANGLETON TX 77515-7366

BELL , BRANDY
614 PORT RD
ANGLETON TX 77515-8372

BERG , CANDICE
2005 FAIRWAY DR
ANGLETON TX 77515-9383

BESSER , J M
PO BOX 530
PEARLAND TX 77588-0530

BESSER , MIKE
2903 SAXTON CT
PEARLAND TX 77581-4833

BILLINGSLEY , GARY
12022 FM 523
ANGLETON TX 77515-8587

BINGHAM , DEBBIE
4419 ZELSKY RD
FREEPORT TX 77541-7916

BLANCHARD , TODD
102 ANNETTE CT
ANGLETON TX 77515-8619

BONNOT , SHANE
308 FOREST DR
LAKE JACKSON TX 77566-4611

BOOMHOWER , DOROTHY
404 PORT RD
ANGLETON TX 77515-9392

BOYKIN , STEVE
102 W MAHAN ST
RICHWOOD TX 77531-2800

BOYKIN , THE HONORABLE STEVE M
CITY OF RICHWOOD TEXAS
1800 BRAZOSPORT BLVD N
RICHWOOD TX 77531-2808

BRANDT , PATSY
1283 COUNTY ROAD 687
ANGLETON TX 77515-8679

BREWER JR , GREG
6442 COUNTY ROAD 390
ALVIN TX 77511-8327

BREWER , LISA
175 GARTH ST
FREEPORT TX 77541-9683

BROADDUS , DERYLL MARK
345 REDFISH DR
FREEPORT TX 77541-7995

BROADDUS , SHERYL
345 REDFISH DR
FREEPORT TX 77541-7995

BROWN , DONALD
723 PORT RD
ANGLETON TX 77515-8375

BROWNING , BRENNAN
1925 FAIRWAY DR
ANGLETON TX 77515-7366

BUCHANNAN , KEVIN
2060 COUNTY ROAD 220
ANGLETON TX 77515-8641

BULANEK , KRISTIN
PO BOX 504
DANBURY TX 77534-0504

BURRIS , EVAN W
39 TROUT LN
FREEPORT TX 77541-7914

BURRIS , MARY K
39 TROUT LN
FREEPORT TX 77541-7914

BYRD , JAMES
509 SIMS DR
ANGLETON TX 77515-5117

BYRD , MARSHA
509 SIMS DR
ANGLETON TX 77515-5117

CADE , RYAN
STE 408A
111 E LOCUST ST
ANGLETON TX 77515-4642

CADE , RYAN
620 BRIT BAILEY BLVD
ANGLETON TX 77515-8537

CAGEL , KATHY
2027 COUNTY ROAD 220
ANGLETON TX 77515-8656

CAMERON , MARK
PO BOX 3431
FREEPORT TX 77542-1631

CARLSON , JOAN ELLEN
638 GRIFFIN DR
FREEPORT TX 77541-9685

CLAMAN , CASSIE
730 RIVERSIDE DR
ANGLETON TX 77515-9118

CONTRERAS , ADAM
2719 BAYOU DR
ANGLETON TX 77515-9125

CONTRERAS , ADAM
1218 LINDFIELD LN
HOUSTON TX 77073-1325

COOPER , RENEE
3 HOLLYCHASE ST
RICHWOOD TX 77531-2024

CORTESE , RICKIE
214 COUNTY ROAD 454A
ANGLETON TX 77515-8663

COTHRON , MONTA
75 ANNETTE CT
ANGLETON TX 77515-8125

COTHRON , WALTER
75 ANNETTE CT
ANGLETON TX 77515-8125

COVEY , MATT
781 COUNTY ROAD 687
ANGLETON TX 77515-9673

CRAVINHO , CAROLE
2304 MESSINA DR
PEARLAND TX 77581-5332

CROSBY , MARY SPEARS
1535 FAIRWAY DR
ANGLETON TX 77515-9379

CUNNINGHAM , MRS JACQUELINE DUNN
111 RIVERSIDE DR
ANGLETON TX 77515-9107

DAVID , BETSY & GLENN
141 RIVERSIDE DR
ANGLETON TX 77515-9107

DAVID , BETSY
141 RIVERSIDE DR
ANGLETON TX 77515-9107

DAVID , GLENN
141 RIVERSIDE DR
ANGLETON TX 77515-9107

DAVIDSON , MISS ASHLYNE
1925 FAIRWAY DR
ANGLETON TX 77515-7366

DAVIDSON , AUBREE
1925 FAIRWAY DR
ANGLETON TX 77515-7366

DAVIDSON , MR JIMMY
1925 FAIRWAY DR
ANGLETON TX 77515-7366

DAVIS JR , MR JERRY LEE
803 PORT RD
ANGLETON TX 77515-9397

DAVIS , JUAN L
807 PORT RD
ANGLETON TX 77515-9397

DENHAM , DIANNE
431 TAMARIND ST
LAKE JACKSON TX 77566-3141

DESKINS , MARY ALICIA
597 COUNTY ROAD 605
ANGLETON TX 77515-7666

DUKE , JUSTIN
3402 COUNTY ROAD 197
ALVIN TX 77511-1726

DURHAM , MICHAEL
15806 DEERPATH CT
TOMBALL TX 77377-8540

DURHAM , MR MICHAEL W
31434 BAYOU BND
RICHWOOD TX 77515-7091

DURHAM , MICHAEL WAYNE
THIRDCOASTBULKHEADS LLC
2827 BAYOU DR
ANGLETON TX 77515-9127

DURHAM , STEPHANYE
31434 BAYOU BND
RICHWOOD TX 77515-7091

DURHAM , STEPHANYE
2827 BAYOU DR
ANGLETON TX 77515-9127

DUVAL , DIANA
227 RIVERSIDE DR
ANGLETON TX 77515-9109

DUVAL , MRS FELECIA
2535 BAYOU DR
ANGLETON TX 77515-9121

DWIRE , R P
3130 N FAIRWAY DR
ANGLETON TX 77515-8162

EAGER , LAUREN
15863 MENLOW BEND DR
HUMBLE TX 77396-5114

EDWARDS , CHARLES
2003 FAIRWAY DR
ANGLETON TX 77515-9383

EDWARDS , KATHY
2003 FAIRWAY DR
ANGLETON TX 77515-9383

ELLIOTT , RICHARD
411 BAYOU DR
FREEPORT TX 77541-6633

ELZA , JAN
1847 FAIRWAY DR
ANGLETON TX 77515-7373

ELZA , STEVEN
1847 FAIRWAY DR
ANGLETON TX 77515-7373

ERCHINGER , GEORGE A
6 TROUT LN
FREEPORT TX 77541-7914

ESCALANTE , RODRIGO
2918 OAKWOOD SHORES DR
RICHWOOD TX 77515-7096

ESCALANTE , RORY
2918 OAKWOOD SHORES DR
RICHWOOD TX 77515-7096

ESTRADA PEE , GENEVIE
12130 ANNETTE RD
ANGLETON TX 77515-8107

ESTRADA , MAMIE
12203 ANNETTE RD
ANGLETON TX 77515-9321

EVANS , GERARD
723 PORT RD
ANGLETON TX 77515-8375

FELDER , SHERRIE
32 TROUT LN
FREEPORT TX 77541-7914

FEWELL , CLINT
4515 TRAMMEL ST
FREEPORT TX 77541-7931

FITZE , DANA
504 EDGEWATER ST
RICHWOOD TX 77531-2021

FITZE , DANA
504 EDGEWATER ST
CLUTE TX 77531-2021

FITZE , JOHN
504 EDGEWATER ST
RICHWOOD TX 77531-2021

FOERSTER , ERIC
CITY OF RICHWOOD
1800 BRAZOSPORT BLVD N
RICHWOOD TX 77531-2808

FOJTIK , TAMMY
2527 BASTROP ST
ANGLETON TX 77515

FOLLETT , JIM
818 COUNTY ROAD 605
ANGLETON TX 77515-7671

FOSSATI , DAVID & SHERRI
1259 FAIRWAY DR
ANGLETON TX 77515-8710

FOSSATI , SHERRI
1259 FAIRWAY DR
ANGLETON TX 77515-8710

GANN , GARRY
395 REDFISH DR
FREEPORT TX 77541-7995

GARCIA , AARON
614 COMPASS RD
ANGLETON TX 77515-9104

GARCIA , KIRSTEN
1800 BRAZOSPORT BLVD N
RICHWOOD TX 77531-2808

GARNER , JAY
815 COUNTY ROAD 504B
ANGLETON TX 77515

GARNER , KIMBERLEY
100 CONCORD AVE
CLUTE TX 77531-4754

GENTRY , CHUCK
459 COUNTY ROAD 23
FREEPORT TX 77541

GENTRY , EDDIE GENE
6201 COUNTY ROAD 288
ANGLETON TX 77515-8658

GRAHAM , SONYA
124 EDGEWATER ST
RICHWOOD TX 77531-2014

HANES , APRIL
350 COUNTY ROAD 605
ANGLETON TX 77515-7661

HANES , JASON K
350 COUNTY ROAD 605
ANGLETON TX 77515-7661

HARLEY , DYLAN
9140 HIGHWAY 6 N
HOUSTON TX 77095-2478

HARLEY , MRS RHONDA
2731 BAYOU DR
ANGLETON TX 77515-9125

HARLEY , STANLEY
2731 BAYOU DR
ANGLETON TX 77515-9125

HAWKINS , GREG
325 RIVERSIDE DR
ANGLETON TX 77515-9111

HAWKINS JR , GREGORY
114 DUDD ST
ANGLETON TX 77515-8380

HAWKINS , GREGORY A
114 DUDD ST
ANGLETON TX 77515-8380

HAWKINS , LORI
325 RIVERSIDE DR
ANGLETON TX 77515-9111

HENDERSON , MARK
17402 CATHEDRAL PINES DR
HUMBLE TX 77346-3908

HENSON , DAVID & DAVID
25 W SOUTHFORK PINES CIR
THE WOODLANDS TX 77381-2543

HENSON , DAVID & DAVID
25 W SOUTHFORK PINES CIR
THE WOODLANDS TX 77381-2543

HENSON , STEVEN
3115 N FAIRWAY DR
ANGLETON TX 77515-8593

HESTON , ANDREW MICHAEL
BRAZORIA COUNTY
STE 408A
111 E LOCUST ST
ANGLETON TX 77515-4642

HICKS , CUTHRELL SHANE
1908 TRACY LYNN LN
ALVIN TX 77511-3830

HICKS , SHANE
4535 COUNTY ROAD 459B
FREEPORT TX 77541-9665

HILLMAN , MARIE
301 APPALOOSA RUN
LIBERTY HILL TX 78642-3862

HINES , BRIDGETT L
9 ROBINHOOD LN
RICHWOOD TX 77531-2026

HINES , MICHAEL J
9 ROBINHOOD LN
CLUTE TX 77531-2026

HINES , MICHAEL L
979 COUNTY ROAD 687
ANGLETON TX 77515-8685

HOLT , MICHAEL LEE
1501 FAIRWAY DR
ANGLETON TX 77515-9379

HOLT , TIM
509 HAMPTON RD
ANGLETON TX 77515-2042

HOOPER , MARBELLA
823 PORT RD
ANGLETON TX 77515-9397

HOUSE , DIANNE
2325 PALM CIR
SEABROOK TX 77586-1677

HOWELL , REBECCA
RR 8 BOX 527
ANGLETON TX 77515-9494

HUFFMAN , THE HONORABLE JOAN STATE
SENATOR
THE SENATE OF TEXAS DISTRICT 17
PO BOX 12068
AUSTIN TX 78711-2068

HUFFMAN , THE HONORABLE JOAN STATE
SENATOR
THE SENATE OF TEXAS DISTRICT 17
PO BOX 541774
HOUSTON TX 77254-1774

JACOBS , NIKIA N
104 COUNTRY RD
ANGLETON TX 77515-9457

JAMAIL , JARROD
120 S FM 154
MULDOON TX 78949-5138

JOHNSON , MIKE
602 MAGNOLIA ST
LAKE JACKSON TX 77566-5409

JONES , DENNIS
155 GARTH ST
FREEPORT TX 77541-9683

JONES , MR MARCUS
542 RIVERSIDE DR
ANGLETON TX 77515-9114

JONES , MONICA
542 RIVERSIDE DR
ANGLETON TX 77515-9114

KEONITZER , MS EDWIN
291 COUNTY ROAD 687
ANGLETON TX 77515-8695

KEONITZER , MRS FRANCES ANNE
291 COUNTY ROAD 687
ANGLETON TX 77515-8695

KERR JR , RICHARD L
8306 BON HILL CT
SPRING TX 77379-6857

LACOUNT , LAUREN
LUCKY DOG COMPANY
2000 BRAZOSPORT BLVD N
RICHWOOD TX 77531-2606

LANDON , HUGH
558 COUNTY ROAD 605
ANGLETON TX 77515-7665

LAPOINTE , SUMMER
318 COTTON ST
FREEPORT TX 77541-9711

LAQUA , LONNIE
217 BASTROP ST
ANGLETON TX 77515-4105

LAQUA , TRAVIS
5233 MAPLE ST
BELLAIRE TX 77401-4807

LEWIS , JULIA
5935 COUNTY ROAD 288
ANGLETON TX 77515-8666

LINDER , DAVID
BRAZORIA COUNTY PRECINCT 4
STE 408A
111 E LOCUST ST
ANGLETON TX 77515-4642

LINDER , DAVID
BRAZORIA COUNTY PRECINCT 4
STE 110
121 N 10TH ST
WEST COLUMBIA TX 77486-1402

LINDER , DAVID
316 JAMISON DR
ANGLETON TX 77515-9451

LOPEZ , TIMOTHY
2711 BAYOU DR
ANGLETON TX 77515-9125

LOWE , ALLI
UNIT 5108
6300 SEAWALL BLVD
GALVESTON TX 77551-2219

LOYACANO , HOWARD
5415 H AND R RD
BRAZORIA TX 77422-7923

MARINO , DR. BARBARA
417 REDFISH DR
FREEPORT TX 77541-7997

MARINO , MR COLTON
417 REDFISH DR
FREEPORT TX 77541-7997

MARINO , MR PAUL
417 REDFISH DR
FREEPORT TX 77541-7997

MARLIN , ADDIE
614 GRIFFIN DR
FREEPORT TX 77541-9685

MARLIN , VANESSA
622 GRIFFIN DR
FREEPORT TX 77541-9685

MARSHALL , REAGAN MEREDITH
389 REDFISH DR
FREEPORT TX 77541-7995

MCCONNELL , KENNEDY
2546 BAYOU DR
ANGLETON TX 77515-9120

MCKINNEY , IRMA
12 SHERWOOD DR
RICHWOOD TX 77531-2041

MCKINNEY , KEVIN
12 SHERWOOD DR
RICHWOOD TX 77531-2041

MEYER , JAMES ARTHUR
150 BASIL
LIVINGSTON TX 77351-4761

MIDDLETON , THE HONORABLE MAYES STATE
REPRESENTATIVE
TEXAS HOUSE OF REPRESENTATIVES DISTRICT 23
PO BOX 2910
AUSTIN TX 78768-2910

MILLER , DOUG
339 REDFISH DR
FREEPORT TX 77541-7995

MILLIORN , LAUREN
214 RIVERSIDE DR
ANGLETON TX 77515-9108

MOOK , ERNESTINA
583 COUNY ROAD 687
ANGLETON TX 77515

MORENO , JAIME
28 COLONY SQ
ANGLETON TX 77515-3645

MORENO , ROSANNA
28 COLONY SQ
ANGLETON TX 77515-3645

MORRAN , JANIE
627 PORT RD
ANGLETON TX 77515-8373

MORRIS , ANGELA
523 OAK DR
LAKE JACKSON TX 77566-4218

MORRIS , LISA
69 KIRBY DR
WEST COLUMBIA TX 77486

MOYLE , ALYSSA MICHELLE
4606 W FM 1462
ROSHARON TX 77583-7508

MURRELL , GILNER
1215 FAIRWAY DR
ANGLETON TX 77515-8710

NESRSTA , ASHLEY
804 PORT RD
ANGLETON TX 77515-9396

NESRSTA , JUSTIN DAVID
804 PORT RD
ANGLETON TX 77515-9396

NEWTON , SAMANTHA
1215 FAIRWAY DR
ANGLETON TX 77515-8710

NORTH , JIM
STE J BOX 243
117 HIGHWAY 332 W
LAKE JACKSON TX 77566-4023

NUGENT , RANDY
517 EDGEWATER ST
RICHWOOD TX 77531-2020

O'BRIEN JR , MR MICHAEL K
609 ORANGEWOOD DR
CONROE TX 77302-1179

OLIVER , DEBRA
221 COUNTY ROAD 839
ANGLETON TX 77515-8601

OWENS , DOUGLAS
804 AKERS ST
ANGLETON TX 77515-5611

PARKER , CINDY
521 EDGEWATER ST
CLUTE TX 77531-2020

PAYNE , DONALD
STE 408A
111 E LOCUST ST
ANGLETON TX 77515-4642

PELITER , GERALD
2045 COUNTY ROAD 220
ANGLETON TX 77515-8656

PEROUTY , JAMES W
419 REDFISH DR
FREEPORT TX 77541-7997

PEROUTY , MRS MATTIE MOORE
419 REDFISH DR
FREEPORT TX 77541-7997

PHILLIPS , AMY
507 BAYOU WOODS DR
ANGLETON TX 77515

PHILLIPS , JAMES & SHIRLEY
507 COUNTY ROAD 687
ANGLETON TX 77515-8689

PLATO , KENNETH M
415 REDFISH DR
FREEPORT TX 77541-7997

POLASEK , DAVID P
12011 COUNTY ROAD 596
ANGLETON TX 77515-8252

POLASEK , PATTI LYNN
12011 COUNTY ROAD 596
ANGLETON TX 77515-8252

POSPISIL , LISA
12007 ANNETTE RD
ANGLETON TX 77515-8106

PRIHODA , EMIL E
313 RIVERSIDE DR
ANGLETON TX 77515-9111

PRUETT , JAVAN
3130 N FAIRWAY DR
ANGLETON TX 77515-8162

PURNELL , BOB & MELODY
12006 COUNTY ROAD 596
ANGLETON TX 77515-8251

PURNELL , MELODY
12006 COUNTY ROAD 596
ANGLETON TX 77515-8251

PURNELL , ROBERT
12006 COUNTY ROAD 596
ANGLETON TX 77515-8251

PURSWELL , KENNETH
12022 WALDEMAR DR
HOUSTON TX 77077-4957

PURSWELL , KENNETH R
12027 WALDEMAR DR
HOUSTON TX 77077-4956

RABORN , HELEN
12238 ANNETTE RD
ANGLETON TX 77515-8108

REICH , BRAD
310 EDGEWATER ST
RICHWOOD TX 77531-2017

REICH , BRUNO
403 EDGEWATER ST
CLUTE TX 77531-2018

REYES , GILBERT
153 HOUSTON ST
ANGLETON TX 77515-4136

REYNOLDS , BARRY T
45 TROUT LN
FREEPORT TX 77541-7914

REYNOLDS , LAWANA
45 TROUT LN
FREEPORT TX 77541-7914

RIDENOUR , LISA
4722 COUNTY ROAD 459D
FREEPORT TX 77541-7932

ROBERTS , CINDY
17402 CATHEDRAL PINES DR
HUMBLE TX 77346-3908

ROBERTS , GENE
228 E HOSPITAL DR
ANGLETON TX 77515-4114

ROULSTON , EUNICE
4545 COUNTY ROAD 227
FREEPORT TX 77541-9662

RUSO III , BILL JOSEPH
367 REDFISH DR
FREEPORT TX 77541-7995

RUSO , JENNIFER
367 REDFISH DR
FREEPORT TX 77541-7995

RUTLEDGE , FRANK
722 PORT RD
ANGLETON TX 77515-8374

SAWYER , WILLIAM
201 SMILIE RD
ANGLETON TX 77515-2137

SCHILLER , RAYMOND
513 COUNTY ROAD 698D
ANGLETON TX 77515-7896

SCHULTZ , FRANCES
642 COUNTY ROAD 605
ANGLETON TX 77515-7667

SEBESTA JR , L M
STE 102A
111 E LOCUST ST
ANGLETON TX 77515-4642

SHAPLEY , MICHAEL
803B PORT RD
ANGLETON TX 77515-9397

SHOCKLEY , DAVID
623 PORT RD
ANGLETON TX 77515-8373

SHOCKLEY , GAYE
623 PORT RD
ANGLETON TX 77515-8373

SLUIS , KENNETH
32362 BAYOU BND
RICHWOOD TX 77515-7080

SPARKMAN , JUSTIN
140 DOVE TRL
RICHWOOD TX 77531-2248

STOCKMAN , JAMES
12113 FM 523
ANGLETON TX 77515-2001

STOCKMAN , LYN TIGNER
12113 FM 523
ANGLETON TX 77515-2001

STRAWN , JOSH
33219 BLUE MARLIN DR
RICHWOOD TX 77515-7290

STRICKLAND , LINDA S
726 RIVERSIDE DR
ANGLETON TX 77515-9118

STRICKLAND , TIMOTHY
726 RIVERSIDE DR
ANGLETON TX 77515-9118

STRICKLAND , TYLER
1997 KINGSTON CV
LEAGUE CITY TX 77573-4988

STROTHA , DIXIE
12007 ANNETTE RD
ANGLETON TX 77515-8106

STUCKMAN , ED
PO BOX 1894
ANGLETON TX 77516-1894

TAYLOR , THE HONORABLE LARRY STATE
SENATOR
THE SENATE OF TEXAS DISTRICT 11
PO BOX 12068
AUSTIN TX 78711-2068

THOMPSON , THE HONORABLE ED STATE
REPRESENTATIVE
TEXAS HOUSE OF REPRESENTATIVES DISTRICT 29
PO BOX 2910
AUSTIN TX 78768-2910

TILLEY , KEVIN
371 REDFISH DR
FREEPORT TX 77541-7995

TREYBIG , GERALD
730 RIVERSIDE DR
ANGLETON TX 77515-9118

TUMLINSON , JANE
30 TROUT LN
FREEPORT TX 77541-7914

VASUT , THE HONORABLE CODY THANE STATE
REPRESENTATIVE
TEXAS HOUSE OF REPRESENTATIVES DISTRICT 25
STE 25
222 N VELASCO ST
ANGLETON TX 77515-4566

VASUT , THE HONORABLE CODY THANE STATE
REPRESENTATIVE
TEXAS HOUSE OF REPRESENTATIVES DISTRICT 25
PO BOX 2910
AUSTIN TX 78768-2910

VINCENT , BRUCE
403 REDFISH DR
FREEPORT TX 77541-7997

WAITE , BILL
131 BASTROP BAYOU DR
ANGLETON TX 77515-8371

WAITE , JANET
131 BASTROP BAYOU DR
ANGLETON TX 77515-8371

WALCIK , MR BILLY JOE
913 OAK RIDGE DR
ANGLETON TX 77515-9254

WALKER , DONNA
119 REDFISH DR
FREEPORT TX 77541-7907

WALTHALL , MS JANIE
706 GRIFFIN DR
FREEPORT TX 77541-9499

WATTS , MARK
149 LEGEND LN
ANGLETON TX 77515-7558

WEAVER , HUNTER
11 TROUT LN
FREEPORT TX 77541-7914

WEBB , MARK A
32811 AMBERJACK DR
RICHWOOD TX 77515-7361

WEIDNER , BRANDY
139 COUNTY ROAD 458D
ANGLETON TX 77515

WELLS , JAMES
2711 BAYOU DR
ANGLETON TX 77515-9125

WELLS , PAUL
3410 E FM 2237
MULDOON TX 78949-5107

WESTFALL , CONSTANCE
473 COUNTY ROAD 687
ANGLETON TX 77515-8691

WHITE , NORMAN
107 E SANDPIPER RD
ANGLETON TX 77515

WILLINGHAM , BRET
31 TROUT LN
FREEPORT TX 77541-7914

WILLIS , JUSTIN
104 COUNTRY RD
ANGLETON TX 77515-9457

WILLIS III , REVEREND ROBERT V
711 COUNTY ROAD 687
ANGLETON TX 77515-9673

WILSON , MS MICKYE MICHELLE
685 COUNTY ROAD 687
ANGLETON TX 77515-8687

WOLLAM , NANCY
222 N VELASCO ST
ANGLETON TX 77515-4566

WOMACK , LINIZE
2003 FAIRWAY DR
ANGLETON TX 77515-9383

WOOSLEY III , GLEN M
1320 GLENVIEW LN
ANGLETON TX 77515-3633

YANEZ , ALEX
354 REDFISH DR
FREEPORT TX 77541-7994

ZIEBER , CAROLE
3418 SURREY LN
DEER PARK TX 77536-5292

ZIEBER , CHARLES & TAMMI
2515 BAYOU DR
ANGLETON TX 77515-9121

ZIEBER III , CHARLES E
3112 MISTY SHORE DR
LEAGUE CITY TX 77573-5989

ZIEBER , MR CHRIS
239 RIVERSIDE DR
ANGLETON TX 77515-9109

ZIEBER , HEATHER
3112 MISTY SHORE DR
LEAGUE CITY TX 77573-5989

ZIEBER , JAMES K
7248 AVENUE L 1/2
SANTA FE TX 77510-9527

ZIEBER , TAMMI
2515 BAYOU DR
ANGLETON TX 77515-9121

ZIEHL , JODI
317 COUNTY ROAD 201
ANGLETON TX 77515-7635

ZIEBIS , CAROLE & RILEY
3418 SURREY LN
DEER PARK TX 77536-5292

ZIEBIS , HARPER
3418 SURREY LN
DEER PARK TX 77536-5292

TPDES PERMIT NO. WQ0016046001

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

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§
§
§**

**BEFORE THE
TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the application by Undine Texas Environmental, LLC (Undine) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016046001, and on the Executive Director's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section (§) 55.156, before an application is approved, the Executive Director prepares a response to all timely, relevant and material, or significant comments. Senator Joan Huffman, Representative Cody Vasut, the City Council of the City of Richwood, The Honorable Steve M. Boykin (Mayor of the City of Richwood), Brazoria County Commissioners Court,¹ and approximately 150 individuals requested a Public Meeting. This Response addresses all timely filed public comments received, whether or not withdrawn.

Representative Cody Vasut provided oral and written comments at the Public Meeting. Additionally, Senator Joan Huffman, Senator Larry Taylor, and Representative Mayes Middleton, Representative Ed Thompson, provided comments after the close of the comment period. Richard Elliott and Tami Zieber provided comments during the comment period and after the close of the comment period. The Office of the Chief Clerk received timely comments from the persons in Attachment A.

If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our website at <http://www.tceq.texas.gov>.

BACKGROUND

Description of 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

¹ Resolution dated April 19, 2022 Approved by: L.M. "Matt" Sebesta, Jr. (Brazoria County Judge) Donald "Dude" Payne); Ryan Cade (Commissioner, Precinct 2); and David Lindner (Commissioner, Precinct 4).

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 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.

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 February 9, 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.

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.

Access to Rules, Laws and Records

Please consult the following websites to access the rules and regulations applicable to this permit:

- for the Secretary of State website: <http://www.sos.state.tx.us>;
- for TCEQ rules in Title 30 of the Texas Administrative Code (TAC): www.sos.state.tx.us/tac/ (select “View the current Texas Administrative Code” on the right, then “Title 30 Environmental Quality”);
- for Texas statutes: <http://www.statutes.legis.state.tx.us/>;
- to access the TCEQ website: www.tceq.texas.gov (for downloadable rules in Adobe PDF format, select “Rules” then “Download TCEQ Rules”);
- for Federal rules in Title 40 of the Code of Federal Regulations: www.ecfr.gov; and
- for Federal environmental laws: <http://www.epa.gov/laws-regulations>.
- The draft permit, the Statement of Basis/Technical Summary, and the Executive Director’s Preliminary Decision, are available for viewing and copying at the Angleton Library, 401 E. Cedar Street, Angleton, TX, 77515.

Commission records for this application and draft permit are available for viewing and copying at the TCEQ’s main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of the Chief Clerk), until final action is taken. Some documents located in the Office of the Chief Clerk may be located on the Commissioners’ Integrated Database at: <https://www14.tceq.texas.gov/epic/eCID/>.

COMMENTS AND RESPONSES

COMMENT 1:

The persons in Attachment B expressed general objections to the Undine draft permit.

RESPONSE 1:

The Executive Director acknowledges the comments.

COMMENT 2:

Commissioner Linder expressed concern that if the wastewater treatment facility is sold there is no guarantee that the purchaser will diligently operate and maintain the facility.

RESPONSE 2:

TCEQ's rules provide that a permit is "issued in personam and may be transferred only upon approval of the commission."² If the permit is transferred the new owner must comply with all applicable requirements; if the new owner fails to comply with the applicable requirements, it may be subject to enforcement.

COMMENT 3:

Commissioner Linder stated that there should be an additional layer of scrutiny when a private entity provides traditional public utility functions.

RESPONSE 3:

The Texas Water Code (TWC) § 26.027 provides that the Commission may issue permits for the discharge of waste or pollutants into or adjacent to water in the state. Neither the TWC nor the rules governing the wastewater treatment facilities provide for a different level of review based on the type of applicant. The Executive Director performed a thorough review of the Undine application which is described in the Executive Director's Statement of Basis and associated Interoffice Memoranda. After completing the review, the Executive Director drafted a permit that compiles with all applicable statutory and regulatory requirements, which apply regardless of whether the owner is a governmental or private entity. Additionally, TWC Chapter 7 provides the commission with enforcement authority.

COMMENT 4:

Jamie Ballaurd stated that discharges to waterways should not be allowed. Similarly, Michael Durham stated that the Undine permit should not be issued without approval from the people that live along the waterway.

RESPONSE 4:

The Texas Water Code (TWC) provides that the TCEQ is the agency primarily responsible for "implementing the constitution and laws for this state relating to the

² 30 TAC § 305.64(a)

conservation of natural resources and the protection of the environment.”³ The TWC prohibits the discharge of waste or pollution into or adjacent to water in the state without authorization from the Commission.⁴ To implement this policy the TCEQ was given the authority to issue TPDES permits for the discharge of waste or pollutant into or adjacent to water in the state.⁵ Historically, Texas courts have held that water in a watercourse is the property of the State, held in trust for the public.⁶ Accordingly, the TCEQ is authorized to permit the discharge of treated domestic wastewater into water in the state.

Additionally, the Court of Appeals considered whether the flow of treated wastewater from a city’s wastewater treatment facility caused a taking of or damage to downstream landowners’ property in *Domel v City of Georgetown*.⁷ In *Domel*, downstream landowners (Ethel and Norman Domel) sued the City of Georgetown, alleging that the value of their property was diminished by the City’s discharge of treated wastewater into an intermittent stream that crossed their land. The question before the court was whether the City of Georgetown needed permission from downstream landowners in order to discharge treated wastewater into a watercourse on privately-owned land pursuant to a state-issued permit.⁸

The Court held that “[the State] does not need title to use the bed and banks of a watercourse for the purpose of transporting water. . .,” and that “the State has the right to use the channel of the watercourse to meet its constitutionally mandated duty to conserve and develop the State’s water resources.”⁹ Finally, the court considered the language that is on the first page of every TPDES permit (quoted above), and determined that the City did not need additional authority to use the watercourse for the discharge of treated domestic wastewater.¹⁰

Because the State is authorized to use the bed and banks to transport water, and the TCEQ has authority to authorize a discharge of treated domestic wastewater into water in the state through a TPDES permit, the applicant for a TPDES permit does not need permission from downstream landowners to use the watercourse running through their property.

COMMENT 5:

Regan Meredith Marshall stated that the people that live on Bastrop Bayou do not want any additional drainage to Bastrop Bayou. Rhonda Harley stated that there are other water ways in Brazoria County that would be closer to Undine. Michael Durham commented that Undine should choose a location that would discharge

³ TWC § 5.012.

⁴ TWC § 26.121.

⁵ TWC § 26.027.

⁶ *Goldmith & Powell v State*, 159 S.W. 2d 534, 535 (Tex.Civ.App.-Dallas 1942).

⁷ *Domel v. City of Georgetown*, 6 S.W.3d, 349, 358 (Tex. App.-Austin 1999).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

directly to the Gulf of Mexico. Kathy Edwards stated that Undine should discharge to a river instead of the Bayou.

RESPONSE 5:

TCEQ does not have the authority to mandate a different discharge location or wastewater treatment plant location provided the applicant's proposed location and discharge route comply with the TWC Chapter 26 and 30 TAC Chapter 309, relating to "Domestic Wastewater Effluent Limitations and Plant Siting."

If Undine updates its application with a different location or a different discharge route, the Executive Director will reevaluate the discharge route to ensure that the draft permit contains appropriate limits and conditions for the revised discharge location or route. Additionally, new landowners may need to be notified if Undine changes the facility location or the discharge route.

COMMENT 6:

Commissioner Linder noted that the potential for a malfunction is very concerning. Michael Durham asked what happens if the WWTF fails. Mr. Durham also stated that human error will eventually cause a failure that will ruin the Bayou. Jerry Davis noted that at some point an operator will make an error. Sherri Fossati asked what will happen if there is a leak of raw sewage. Sherri Fossati also noted that it will be costly and perhaps impossible to remediate any damage caused by a discharge of untreated wastewater.

RESPONSE 6:

The draft permit prohibits unauthorized discharge of wastewater or any other waste. To help ensure that there will not be an unauthorized discharge, Undine must maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, or retention of inadequately treated wastewater.¹¹ In addition, the plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by the Executive Director. TCEQ.¹² All of these permit provisions are designed to help prevent unauthorized discharges of raw sewage. Except as allowed by 30 TAC § 305.132, Undine will be required to report an unauthorized discharge to the TCEQ within 24 hours.¹³ Finally, Undine will be subject to potential enforcement action for failure to comply with TCEQ rules or the permit.

To help ensure there are no unauthorized discharges, the owner of a wastewater treatment facility is responsible for developing an operation and maintenance manual with the assistance of an engineer and certified wastewater operations staff. The manual must be updated when there are personnel changes, construction of treatment units, alteration of treatment units, re-rating of treatment units, or changes in the

¹¹ 30 Tex. Admin. Code § 217.36.

¹² Undine Draft Permit, Other Requirements, Item 6, page 34; *see also* 30 Tex. Admin. Code § 217.6(d).

¹³ Undine Draft Permit, Monitoring and Reporting Requirements, Item 7, page 7.

influent quality or quantity that require permanent changes in the operation of the wastewater treatment facility.¹⁴ The wastewater treatment facility owner must ensure that the operation and maintenance manual includes all information specific to the wastewater treatment facility that is necessary to ensure efficient and safe operation, maintenance, monitoring, and reporting. The operation and maintenance manual must include administrative and recordkeeping items, operation and maintenance information, and safety information.

In addition, the wastewater treatment facility owner shall keep a copy of a current operation and maintenance manual at the wastewater treatment facility site. The operation and maintenance manual shall be immediately available for inspection by the Executive Director upon request. Also, the owner shall submit a copy of the operation and maintenance manual to the Executive Director within 30 days of a written request from the Executive Director.

The TCEQ's Office of Compliance and Enforcement ensures compliance with applicable state and federal regulations. The Region 12 Office is required to conduct a mandatory comprehensive compliance investigation at minor facilities (facilities with permitted flow less than one million gpd) once every five fiscal years. Additional mandatory investigations can be required if the facility is categorized as significant noncompliance which is determined by the Compliance Monitoring Section of the TCEQ and is based on self-reported effluent violations.

If the facility is found to be out of compliance with the terms or conditions of the permit, Undine may be subject to enforcement. If anyone experiences any suspected incidents of noncompliance with the permit or TCEQ rules, they may report these to the TCEQ by calling the toll-free number, 1-888-777-3186, or the TCEQ Region 12 Office in Houston at (713)767-3500. Citizen complaints may also be filed on-line at <https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html>.

COMMENT 7:

Michael Durham suggested Undine use its treated wastewater to irrigate green spaces, city property or golf courses. Similarly, The Bayou and Tammi Zieber asked why Undine can obtain a permit to discharge to a ditch leading to the bayou when the current landowners are on septic systems that use irrigation. Tammi Zieber asked why the residents are not allowed to discharge treated wastewater to the bayou, but Undine will be allowed to.

Bruce Vincent commented that Undine should use retention ponds and surface irrigation to preserve the water quality in Bastrop Bayou. Marcus Jones stated that Undine should keep the effluent on its own property, in a retention or detention pond. Commissioner David Linder stated that there are options other than discharge. The Costal Conservation Association (CCA) recommends the TCEQ deny the permit and require that Undine find another option. Justin Nesrsta asked why Undine isn't

¹⁴ 30 TAC §217.16.

required to use septic tanks. Sherri Fossati recommended that Undine find another solution. Hugh Landon suggested the Undine discharge on its own property. The Bayou, David Fossati, and Sherri Fossati, stated that the residents are required to use septic systems, therefore Undine should also be required to use a septic system.

Similarly, David Shockley asked what the alternatives are. Michael Durham also stated that there must be a better solution to handle Undine's wastewater. René Cooper stated that Undine should be required to treat and dispose of its wastewater on its own property.

Richard Elliott asked how the TCEQ can approve the Undine permit when the TCEQ required Demi-John to install a community sewer service in 2017. Mr. Elliott stated that Demi-John had to install the community service because of the impact of the community on Bastrop Bayou.

RESPONSE 7:

The TCEQ does not have authority to mandate a different sewage disposal method be used by a developer, or any other entity, provided the method chosen complies with all applicable statutory and regulatory requirements.

COMMENT 8:

The Bayou asked which is better for the environment, septic systems or WWTF.

RESPONSE 8:

If properly designed, built and operated, both septic systems and wastewater treatment facilities protect the environment. Decentralized wastewater treatment units such as septic tanks are types of on-site sewage facilities (OSSF). A septic tank is a buried, watertight tank designed and constructed to partially treat raw wastewater.¹⁵ The tank separates and retains floatable and settleable solids in the wastewater. Following the primary treatment, wastewater is then discharged to a drain field for further treatment by and dispersal to the environment.

The State of Texas does not mandate a specific type of OSSF treatment system. <https://www6.tceq.texas.gov/oars/index.cfm?fuseaction=search.county> If Undine decides to use individual septic tanks to serve the proposed residential area, it will be subject to 30 TAC Chapter 285, relating to "On-site Sewage Facilities (OSSF)".¹⁶ However, the anticipated combined flow from all systems on a tract of land must be less than 5,000 gallons per day (gpd) on an annual average basis.¹⁷ If the anticipated combined flow exceeds 5,000 gpd, a domestic wastewater treatment facility is required because wastewater treatment facilities produce a higher quality effluent than septic tanks and are therefore more protective of the environment. Additionally, the OSSF

¹⁵ U.S. EPA Decentralized Systems Technology Fact Sheet: Septic Tank System. (EPA 832-F-00-040)

¹⁶ 30 TEX. ADMIN. CODE § 285.4

¹⁷ 30 Tex. Admin. Code § 285.8(a)(3)

rules provide minimum lot sizes dependent on whether the lot is served by a public water supply or well.¹⁸

The quality of effluent from an individual anaerobic OSSF and from a WWTP is significantly different. An OSSF treats a limited volume of domestic wastewater to primary treatment standards. The wastewater strength, or organic loading, of Biochemical Oxygen Demand (5-day) (BOD₅) and Ammonia Nitrogen NH₃-N in untreated or raw sewage from a residential subdivision is estimated to be 250-400 mg/l and 15-75 mg/l, respectively.¹⁹ The draft permit, for example, requires that the treated effluent shall not exceed 10 mg/l CBOD₅ with 3 mg/l NH₃-N in all phases.²⁰ Therefore, the Reserve at Angleton WWTP will be required to achieve a more than 95% reduction in BOD₅/CBOD₅ concentration in the treated effluent prior to discharge. In comparison, a well-maintained septic tank treats sewage to approximately 100 mg/l BOD₅ prior to discharging into the underground drainfield or soil absorption field.

To meet its effluent limits, the proposed WWTF will have to provide better than secondary treatment including disinfection. For a proposed development of this type, a wastewater treatment facility will provide a higher level of environmental protection than an OSSF.

For more information regarding OSSF rules and regulations please contact the TCEQ OSSF Program at (512) 239-3799 or the Brazoria County Authorized Agent at (281) 485-3048.

COMMENT 9:

Michael Durham stated that TCEQ has lost the trust of the people.

RESPONSE 9:

The Executive Director acknowledges the comment.

COMMENT 10:

Amy Phillips asked if the WWTF could be located somewhere different so that fewer homes would be impacted.

RESPONSE 10:

TCEQ does not have the authority to mandate a different WWTF location if an applicant's proposed location complies with Texas Water Code Chapter 26 and 30 TAC Chapter 309, relating to "Domestic Wastewater Effluent Limitations and Plant Siting." The proposed WWTF complies with all location related rules.

COMMENT 11:

Hugh Landon and Kenneth R. Purswell asked if an Environmental Impact Statement has been done. Similarly, Vanessa Marlin stated that the TCEQ should require an environmental study on the potential impacts of the proposed discharge.

¹⁸ 30 TAC § 285.4(a)(1).

¹⁹ 30 Tex. Admin. Code § 217.32(a)(3)

²⁰ Undine Draft Permit, Effluent Limitations and Monitoring Requirements, pages 2 - 2a

RESPONSE 11:

An Environmental Impact Statement is not required as part of the TPDES wastewater permitting process. Texas assumed authority under federal mandate to administer the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Clean Water Act in 1998. The NPDES is a federal regulatory program to control discharges of pollutants to surface waters of the United States. The TCEQ is responsible for the protection of water quality with federal regulatory authority over discharges of pollutants to Texas surface water. The TCEQ has a legislative responsibility to protect water quality in the State of Texas and to authorize wastewater discharge TPDES permits under TWC Chapter 26.

COMMENT 12:

Bruno Reich asked if other agencies would be involved in the decision on the Undine application. Similarly, Dana Fitze asked how one state agency can make a decision on this type of permit without consulting other state agencies. Bruno Reich stated that the Texas Parks and Wildlife Department should be involved in the decision on the Undine application. Similarly, Michael Durham asked if there is an environmental health department that would recommend the TCEQ not issue the TPDES permit to Undine.

RESPONSE 12:

TCEQ rules require that all applications for wastewater discharge permits include mailed notice of both the NORI and the NAPD to the entities listed at 30 TAC § 39.413, which includes government agencies such as the Texas Department of Health, Texas Parks and Wildlife Department (TPWD), and the Texas Railroad Commission. Additionally, as part of the TPDES permitting process, an applicant must submit a Supplemental Permit Information Form, which the Executive Directors sends to United States Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), Texas Parks and Wildlife Department (TPWD), and the State Historical Preservation Officer. TCEQ did not receive any comments regarding this application from any of the Agencies.

COMMENT 13:

Michael Durham asked if the General Land Office (GLO) reviewed the draft permit.

RESPONSE 13:

The GLO did not review this draft permit as the facility location is not considered to be in the Coastal Management Program Boundary.

COMMENT 14:

Dana Fitze asked if the TCEQ asked EPA for input or reports.

RESPONSE 14:

The Executive Director provided a copy of the draft permit to EPA on March 21, 2022. EPA responded on May 4, 2022, as follows:

In accordance with the federal regulations cited at 40 CFR §130.12(a), permit conditions must be consistent with an approved water quality management plan (WQMP). The draft permit is a new permit which includes the introduction of an annual average flow of 62,500 GD (Interim I phase), 125,000 GD (Interim II phase) and 250,000 GD (final phase) at Outfall 001. Paragraph 4 of Page 2 in the fact sheet, states “the effluent limits recommended above have been reviewed for consistency with the WQMP. The proposed limits are not contained in the approved WQMP. However, these limits will be included in the next WQMP update.” It is our understanding that the TCEQ does not issue permits that are inconsistent with an approved WQMP. Therefore, the EPA reiterates, that final permit issuance is contingent upon the approval of a WQMP update that incorporates permit conditions established in the draft permit.

COMMENT 15:

Lisa Ridenour asked if she will be able to personally test the effluent at her own expense.

RESPONSE 15:

The Texas Water Code provides that the Executive Director initiate an enforcement action based on information from a private individual.²¹ For additional information regarding citizen collected evidence, please see: <https://www.tceq.texas.gov/compliance/complaints/protocols>

COMMENT 16:

David Shockley asked how long Undine has operated.

RESPONSE 16:

According to TCEQ’s central registry, Undine has been in existence in Texas since 2017.

COMMENT 17:

David Shockley asked how many facilities Undine has sold after obtaining a TPDES permit.

RESPONSE 17:

According to TCEQ’s records there has not been an ownership change from Undine to another entity. Undine currently owns and operates 17 facilities in Texas.

COMMENT 18:

Billy Joe Walcik stated that the developer needs to work something out with Angleton City Council.

²¹ TWC § 7.0025.

RESPONSE 18:

The Executive Director cannot mandate that a municipality, or any other governmental entity, accept wastewater except under certain circumstances. Texas Water Code § 26.081 enumerates the state's regionalization policy. Section 26.081 states that the policy should "encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state." In furtherance of that policy TWC § 26.0282 authorizes the TCEQ, when considering the issuance of a permit to discharge waste, to deny or alter the terms and conditions of a proposed permit based on need and the availability of existing or proposed area-wide or regional waste collection, treatment, and disposal systems.

Domestic Technical Report 1.1 of the application requires information concerning regionalization of wastewater treatment plants.²² Applicants requesting a new permit or certain major amendments are required to review a three-mile area surrounding the proposed facility to determine if there is a wastewater treatment plant or sewer collection lines within the area that the permittee can use. Applicants are required to contact those facilities to inquire if they currently have the capacity or are willing to expand to accept the volume of wastewater proposed. If an existing wastewater facility has the capacity and is willing to accept the proposed wastewater, the applicant must submit an analysis of expenditures required to connect to a permitted wastewater treatment facility or collection system located within three miles versus the cost of the proposed facility or expansion. Finally, applicants are required to provide copies of all correspondence with the owners of existing plants within three miles of the proposed plant regarding regionalization with their system.

The only existing wastewater treatment facility or collection system within a three-mile radius of the proposed facility site location that is currently operating is the City of Angleton WWTF (WQ0010548001). On July 1, 2021, Undine submitted the City of Angleton's response declining to accept the proposed wastewater volume to the Executive Director.

COMMENT 19:

Mayor Boykin stated that he hopes TCEQ will be required to do more environmental assessments and consider the impact to the entire area as a result of TCEQ's Sunset Review.

RESPONSE 19:

The Executive Director acknowledges the comment.

²² Domestic Technical Report 1.1 (TCEQ Form 10054), Section 1, Item B, page 21.

COMMENT 20:

Mayor Boykin stated that the TCEQ needs to start listening to the public and take their concerns seriously. Similarly, Michael Durham stated that they did not get any of the answers they wanted at the public meeting.

RESPONSE 20:

The Executive Director appreciates these concerns. Before a TPDES permit is issued there are several ways for individuals to be involved in the permitting process. A Public Meeting for this application was held on July 28, 2022. This Response to Comments addresses all written comments the TCEQ received before the close of the Public Meeting, as well as all oral comments made during the formal comment period of the Public Meeting. Attached with this Response to Comments is the Executive Director's decision on the Undine application. If this Response to Comments does not address your concerns, you may file a request for a contested case hearing or a motion for reconsideration with the commissioners. A contested case hearing is an administrative hearing held by the State Office of Administrative Hearings, conducted in a manner similar to civil trials. A Request for Reconsideration asks the commissioners to reconsider the Executive Director's decision. Additional information on participating in the permitting process can be found at:

<https://www.tceq.texas.gov/agency/decisions/participation/permitting-participation/public-participation-9-1-2015#hearing> or by contacting the Public Education Program at 800-687-4040, pep@tceq.texas.gov or the Office of Public Interest Counsel at 512-239-6363.

COMMENT 21:

Michael Durham asked who from Brazoria signed off on the Undine project.

RESPONSE 21:

TCEQ's rules do not require applicants obtain approval from local authorities for a proposed development prior to submitting an application to the TCEQ for a municipal WWTF. Undine provided approval for the outfall structure from the Angleton Drainage District dated August 10, 2021. The approval letter requires Undine to provide the district with the design of the outfall prior to construction. Undine also provided correspondence between the City of Angleton and Holigan Communities, Inc. noting that the Angleton City Council did not approve the proposed utility agreement for the proposed development.

COMMENT 22:

Bill Waite expressed concern over TCEQ's enforcement process. Mr. Waite noted that with the San Bernard River sewage issue, the TCEQ allows the permittee to pay fines without resolving the issue. Similarly, Patti and David Polasek commented that the TCEQ has not been able to resolve the landfill odor issues, thus they have concerns over TCEQ's oversight of the proposed WWTF.

RESPONSE 22:

Undine's acceptance of the draft permit constitutes acknowledgement of and an agreement to comply with all terms and conditions embodied in the draft permit as well as the rules and orders of the Commission. In accordance with 30 TAC § 305.125(9) and Monitoring and Reporting Requirement No. 7 of the draft permit, Undine must report any noncompliance that may endanger human health or safety or the environment to the TCEQ. This information must be reported orally or by facsimile transmission to the TCEQ Region 12 Office within twenty-four hours of knowledge of the noncompliance. Undine must also submit this information in writing to the Region 12 Office and TCEQ's Enforcement Division within five working days of knowledge of the noncompliance.

Undine's compliance with the draft permit and TCEQ's rules regarding wastewater treatment facility design and operation will protect human health. However, if any unauthorized discharge or other permit violation is observed, the violation can be reported to the TCEQ's Region 12 Office at 713-767-3500, or the TCEQ Environmental Complaints Hot Line at 1-888-777-3186, or online <https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html>

Citizens may also gather data to show the applicants are not in compliance with TCEQ rules. For more information regarding citizen-collected evidence, please visit the TCEQ's webpage on the subject at <https://www.tceq.texas.gov/compliance/complaints/protocols>.

Finally, the draft permit does not limit the ability of an individual to seek legal remedies against the applicant regarding any potential trespass, nuisance, or other cause of action in response to activities that may result in injury to human health or property or interfere with the normal use and enjoyment of property.

COMMENT 23:

Marcus Jones expressed general water quality concerns.

RESPONSE 23:

Effluent discharged into water in the state from facilities regulated under the TPDES program are required to meet the Texas Surface Water Quality Standards (TSWQS). The TSWQS and other applicable rules to ensure the discharge is protective of aquatic life, human health, and the environment, including the designated uses of the receiving waters. The draft permit meets these TSWQS requirements, and the TCEQ does not anticipate that constituents in the discharge will have an adverse effect on the receiving water or its designated uses.

The effluent limitations in the draft permit are designed to maintain and protect the existing instream uses and were derived from a series of rigorous technical reviews performed in accordance with TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards*. The advanced treatment levels that apply to the proposed discharge are expected to maintain the current water quality and protect the existing

instream uses. The draft permit includes effluent limits and monitoring requirements for five-day carbonaceous biochemical oxygen demand (CBOD₅), Total Suspended Solids (TSS), Ammonia Nitrogen (NH₃-N), Chlorine Residual, and pH to ensure that the proposed effluent limits will not result in a violation of the TSWQS, thereby protecting surface water quality, groundwater, and human health. The draft permit also includes additional requirements for the wastewater treatment system to ensure the protection of water quality, wildlife, and human health and for the disposal of domestic sludge generated by the wastewater treatment facility.

Based on the technical review, the Executive Director determined that the draft permit is protective of the environment, water quality, and human health and that it meets TCEQ rules and requirements if Undine operates and maintains the facility as required by the draft permit and applicable regulations. However, if you believe Undine is not complying with the draft permit or TCEQ rules, you may report complaints about the facility to the TCEQ Region 12 Office directly at 1-713-767-3500, the TCEQ Environmental Complaints Hot Line at 1-888-777-3186, or online <https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html>.

Noncompliance with the draft permit may result in enforcement action against Undine.

COMMENT 24:

The persons in Attachment C expressed concern about the potential impacts on the salinity regime on the brackish water system.

RESPONSE 24:

The proposed discharge initially is received by two Angleton Drainage District ditches, which are freshwater (non-tidal) before reaching Bastrop Bayou Tidal. The discharge location is about 2.7 miles from Bastrop Bayou Tidal, which was included in the technical review. The Executive Director concluded that the receiving waters would not be negatively impacted by the treated effluent.

Additionally, during the technical review, the Water Quality Standards Implementation reviewer determined that the treated effluent should not change the ecosystem in Bastrop Bayou. This determination is reflected in the Standard Implementation antidegradation review of the receiving waters which 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.

COMMENT 25:

The persons in Attachment D expressed concern about the impacts any changes in salinity will have on aquatic species within the bayou.

RESPONSE 25:

Based on TCEQ surface water quality monitoring data, which was collected quarterly from 2004-2021, monitoring stations in the upper portions of Bastrop Bayou Tidal exhibited freshwater conditions (salinity levels <2 parts per thousand (ppt)) most of the time. Approximately 70 percent of the measurements from a station upstream of where the proposed discharge would enter Bastrop Bayou showed salinities less than 2 ppt, and approximately 62% of the measurements from the nearest station downstream of where the proposed discharge would enter Bastrop Bayou had salinities less than 2 ppt. Given that these data demonstrate characteristics of a predominantly freshwater system in the upper reaches of Bastrop Bayou and that the proposed discharge is expected to represent only a fraction of the freshwater inputs into the system compared to sources such as stormwater runoff contributions, it is anticipated that the proposed discharge will have a negligible impact on the salinity gradient of Bastrop Bayou.

COMMENT 26:

The persons in Attachment E expressed concern on the effect the discharge will have on the safety of consuming fish and crabs from the Bayou.

RESPONSE 26:

During the technical review, the Water Quality Standards Implementation reviewer determined that the treated effluent should not harm the quality of seafood from Bastrop Bayou. The antidegradation review of the receiving waters was performed in accordance with 30 TAC § 307.5 and the TCEQ Implementation Procedures (June 2010). 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.

COMMENT 27:

Ronnie Gene Augry expressed concern about the impact to water wells.

RESPONSE 27:

The TCEQ has the responsibility to regulate the discharges of pollutants into water in the state. The Executive Director has determined that if a permit is protective of surface water quality, groundwater quality in the vicinity will not be impacted by the discharge. Texas Water Code § 26.401(b) provides that "it is the goal of groundwater

policy in this state that the existing quality of groundwater not be degraded. This goal of nondegradation does not mean zero-contaminant discharge.” The statute also provides that it is the State of Texas’s policy that “discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard.” TWC § 26.401(c)(1).

Additionally, 30 TAC § 309.13(c) provides that a wastewater treatment plant unit may not be located closer than 500 feet from a public water well nor 250 feet from a private water well. To ensure the effluent will be properly disinfected, the draft permit requires Undine to chlorinate its effluent. Further, the draft permit contains permit limits of 126 CFU or MPN of *E. coli* per 100 ml of treated effluent. This limit has been found to be protective of human health in primary contact recreation uses which includes incidental ingestion from activities such as swimming.

COMMENT 28:

Reneé Cooper asked how the discharge of 500,000 gallons an hour will impact the neighborhood.

RESPONSE 28:

The draft permit, if issued, will not allow a continuous discharge of 500,000 gallons per hour. The draft permit for Undine authorizes the discharge of 0.250 million gallons a day, and 694 gallons per minute (or 41,640 gallons per hour) during any 2-hour period. The discharge limit for a 2-hour period accounts for times when the flow into the WWTF is high, which is typically in the mornings and early evenings.

Additionally, the effluent discharged into water in the state from facilities regulated under the TPDES is required to meet the Texas Surface Water Quality Standards (TSWQS). The TSWQS and other applicable rules are protective of aquatic life, human health, and the environment, including the designated uses of the receiving waters. The draft permit meets these TSWQS requirements, and the TCEQ does not anticipate that constituents in the discharge will have an adverse effect on the receiving water or its designated uses.

However, nothing in the draft permit limits the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property. Nor does the draft permit limit the ability of a nearby landowner to seek relief from a court in response to activities that may or do interfere with the use and enjoyment of their property. If Undine’s activities create any nuisance conditions, the TCEQ may be contacted to investigate whether a permit violation has occurred. Potential permit violations may be reported to the TCEQ Region 12 Office at 713-767-3520, or by calling the statewide toll-free number at 1-888-777-3186. Citizen complaints may also be filed online at the following website:

<https://www.tceq.texas.gov/compliance/complaints/protocols>.

COMMENT 29:

Betsy David and Tami Zieber asked how a permit can be issued since there is a Watershed Protection Plan for Bastrop Bayou. Sherri Fossati noted that the Bastrop Bayou Watershed Protection Plan indicates that Bastrop Bayou cannot stand to have any additional sources of runoff.

RESPONSE 29:

The Bastrop Bayou Watershed Protection Plan does not prohibit the development of WWTFs. The proposed WWTF must comply with all applicable state and federal laws and comply with the requirements of their permit. The Bastrop Bayou Watershed Protection Plan identified and listed, in order of priority, the potential sources of pollutants. On this list, discharge from wastewater treatment plants ranked last and was not considered an appreciable source of contamination. The modeling results discussed in the Bastrop Bayou Watershed Protection Plan estimated the loading from WWTFs represents 0.00-0.01 % of the total bacterial loading in the watershed. The discharge of treated effluent from the proposed wastewater treatment facility contains a bacteria limit of 126 Colony-forming units or most probable number per 100 mL.

COMMENT 30:

City of Richwood City Council (Eric Foerster) expressed a concern over unfiltered discharges going into the waterway. Similarly, Mayor Boykin asked if the effluent will be filtered before it is discharged.

RESPONSE 30:

For the proposed discharge location, there are no watershed protection rules that require additional filtering for treated effluent that is discharged to water in the state. The TCEQ design criteria for a domestic wastewater system in 30 TAC Chapter 217, identify types of treatment technology that can achieve the treatment levels required in the proposed permit. Other Requirement No. 6 in the draft permit requires Undine to submit a summary transmittal letter in accordance with the requirements in 30 TAC § 217.6(d). If requested by the Wastewater Permitting Section, Undine shall submit plans and specifications and a final engineering design report which comply with 30 TAC Chapter 217, relating to “Design Criteria for Domestic Wastewater Systems.” Undine shall clearly show how the treatment system will meet the permitted effluent limitations required on Pages 2-2a of the draft permit.²³ The Executive Director’s staff will ensure that the plant design can adequately treat the domestic wastewater in accordance with the effluent limitations in the permit during the review of the plans and specifications for this facility. The draft permit also requires that there be no discharge of floating solids or visible foam in other trace amounts and no discharge of visible oil.

²³ Undine Draft Permit, Other Requirements, Item 6, page 34.

COMMENT 31:

Dana Fitze stated that TCEQ made a decision with the bare minimum information.

RESPONSE 31:

TCEQ staff uses the permit application and various sources of information, including maps and databases, when evaluating a permit application. The TCEQ permit application process requires all applicants to certify under penalty of law that the document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. The understanding is that the information provided by the applicant is true, accurate and complete.²⁴ An applicant is sent a notice of deficiency (NOD) if there is missing information that is required to complete the review of the permit application.

The review process is done based on the information provided in the application. The Executive Director reviewed Undine's application and determined that the draft permit meets all applicable legal and technical requirements.

The following items were considered in developing the draft permit:

- Application received from Undine on September 24, 2021, and additional information received on November 1, 2021, and January 3, 2022;
- Texas Surface Water Quality Standards, 30 TAC §§ 307.1 - 307.10, effective February 7, 2018;
- EPA-approved portions of the 2018 Texas Surface Water Quality Standards, effective February 7, 2018;
- 30 TAC Chapter 309, Subchapter A: Effluent Limitations;
- 30 TAC Chapter 30, Subchapter J: Wastewater Operators and Operations Companies;
- 30 TAC Chapter 217: Design Criteria for Domestic Wastewater Systems;
- 30 TAC Chapter 312: Sludge Use, Disposal, and Transportation;
- 30 TAC Chapter 319, Subchapter A: Monitoring and Reporting Requirements;
- Interoffice memoranda from the Water Quality Assessment Section of the TCEQ Water Quality Division;
- Procedures to Implement the Texas Surface Water Quality Standards (IP), Texas Commission on Environmental Quality, June 2010, as approved by EPA; and the IP, January 2003, for portions of the 2010 IP not approved by EPA;
- Texas 2020 Clean Water Act Section 303(d) List, Texas Commission on Environmental Quality, March 25, 2020; approved by EPA on May 12, 2020.

²⁴ 30 TAC § 305.44.

- Texas Natural Resource Conservation Commission Guidance Document for Establishing Monitoring Frequencies for Domestic and Industrial Wastewater Discharge Permits, Document No. 9001.000-OWR-WQ, May 1998.
- Compliance history report for Undine and the proposed facility prepared on February 15, 2022.

Additionally, the draft permit was reviewed internally before it was reviewed and approved by EPA on May 4, 2022. As discussed in the procedural section above, all required notices have been mailed and published for this application. A public meeting was held July 28, 2022, in Angleton, Texas. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The preliminary determination can be reexamined and may be modified if new information is received.

COMMENT 32:

Lisa Ridenour asked if the water will be tested by a certified environmentalist. Similarly, Timothy Strickland asked if the effluent will be tested before it enters the bayou, who will perform the testing of the effluent, and who will report the results of the testing. Mayor Boykin asked if the results of the analysis would be posted on-line. Mayor Boykin also asked if the samples will be composite samples.

RESPONSE 32:

Undine may collect and analyze the effluent samples itself, or it may contract with a third party for either or both the sampling and analysis. Sampling, analysis, and reporting for compliance of the permit provisions shall be performed in accordance with the Monitoring and Reporting Requirements section and the Definitions and Standard Permit Conditions section of the draft permit. Additionally, TWC § 5.134 requires that laboratory data and analysis for use in commission decisions must be from an accredited environmental testing laboratory.

Because the draft permit authorizes a discharge of less than 0.50 MGD, Undine must obtain its effluent samples by grab sample. Undine is required to conduct effluent sampling and reporting in accordance with 30 TAC §§ 319.4 - 319.12. Additionally, monitoring results must be submitted online using the NetDMR reporting system available through the TCEQ website unless the permittee requests and obtains an electronic reporting waiver. Monitoring results must be signed and certified as required by Monitoring and Reporting Requirements No. 10 in the draft permit.

Once the results are submitted by Undine on the NetDMR, the data can be seen publicly through the EPA ECHO website (<https://echo.epa.gov/>). The search would have to be made using the EPA ID No. TX0141771.

COMMENT 33:

Tammi Zieber asked how often the effluent will be tested.

RESPONSE 33:

The following table describes the frequency of monitoring for each parameter in each phase of the draft permit.

EFFLUENT PARAMETER	INTERIM I PHASE	INTERIM II PHASE	FINAL PHASE
Carbonaceous Biochemical Oxygen Demand (5-day) (CBOD ₅)	One/week	One/week	One/week
Total Suspended Solids (TSS)	One/week	One/week	One/week
Ammonia Nitrogen (NH ₃ -N)	One/week	One/week	One/week
Escherichia coli (E. coli)	One/quarter	One/month	One/month
Chlorine Residual	Five/week	Five/week	Five/week
pH	One/month	One/month	One/month
Dissolved Oxygen (D)	One/week	One/week	One/week

The frequencies set in this table are in accordance with 30 TAC § 319.9(a). A more frequent testing requirement may be placed in the draft permit should the facility become non-compliant.

COMMENT 34:

Tammi Zieber asked how often the WWTF will discharge.

RESPONSE 34:

The volume of wastewater that will be discharged on any given day will vary depending on a variety of factors such as the day of the week, the season and the weather; however, regardless of the volume discharged, the treated wastewater will be discharged throughout the course of the day and will be continuous as long as the facility is receiving wastewater.

COMMENT 35:

Reneé Cooper asked how the daily average flow is calculated.

RESPONSE 35:

The daily average flow calculation consists of the arithmetic average of all determinations of the daily flow within a period of one calendar month. The daily average flow determination consists of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily flow, the determination shall be the arithmetic average of all instantaneous measurements taken during that month. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.²⁵

²⁵ Undine Draft Permit, Definitions and Standard Permit Conditions, Item 1(b), page 3.

COMMENT 36:

Steven Elza noted that the Beachwood subdivision has a lawsuit against Undine for failing to provide clean water. Similarly, George Erchinger stated that Undine has a bad reputation for its drinking water treatment and does not follow all the applicable regulations. The Bayou and David Shockley asked how many cumulative violations Undine has. Similarly, Sherri Fossati stated that Undine has several violations at their other facilities. Hugh Landon noted that Undine has had compliance issues in the past.

RESPONSE 36:

During the technical review of the application, the TCEQ reviewed Undine's compliance history according to the rules in 30 TAC Chapter 60. The compliance history is reviewed for the company and site for the five-year period prior to the date the permit application was received by the Executive Director. The compliance history includes multimedia compliance-related components about the site under review. These components include the following: enforcement orders, consent decrees, court judgments, criminal convictions, chronic excessive emissions events, investigations, notices of violations, audits and violations disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution reduction programs and early compliance.

This permit application was received after September 1, 2002, and the company and site have been rated and classified pursuant to 30 TAC Chapter 60. A company and site may have one of the following classifications and ratings:

1. a **high performer classification**, has a rating of fewer than 0.10 points and is considered to have an above-satisfactory compliance record;
2. a **satisfactory performer classification**, has a rating between 0.10 points to 55 points and is considered to generally comply with environmental regulations; or
3. an **unsatisfactory performer classification**, has a rating above 55 points and is considered to perform below minimal acceptable performance standards established by the commission.²⁶

This site has a rating of N/A which means at the time the Compliance History was prepared, there was no previous history for the facility. The company rating and classification, which is the average of the ratings for all sites the company owns, is 4.0 which is satisfactory. Since this is a wastewater authorization, it only includes items in the compliance history for wastewater.

Anyone of the public can report any nuisance condition observed at any time if they feel the proposed WWTF is not being operated according to permit terms. Additionally, TCEQ regional offices conduct both periodic and regular inspections of wastewater facilities based on complaints received. Noncompliance with TCEQ rules or the permit may result in an enforcement action.

COMMENT 37:

James Arthur Meyer asked what criteria was used to size the WWTF.

²⁶ 30 Tex. Admin. Code § 60. 2 (Compliance History Classification).

RESPONSE 37:

The design of a new wastewater treatment plant must comply with 30 TAC Chapter 217 - Design Criteria for Domestic Wastewater Systems. Under this Chapter, subchapter B includes the criteria for organic loading and flows under Figure 30 TAC § 217.32(a)(3) Table B.1. This table provides some guidance on flows per person. Undine is still required to submit a plans and specification summary transmittal letter for approval prior to construction of the facility as required by Other Requirement No. 6 of the draft permit. This review will ensure that the facility is properly sized.

COMMENT 38:

James Arthur Meyer asked how 250,000 gallons per day was derived.

RESPONSE 38:

Based on the permit application in Attachment M - Buildout Schedule, Undine proposed a flow value of 250 gallons per connection which totals about 1,000 connections in the proposed development.

COMMENT 39:

David and Patti Polasek asked what type of monitoring program will be in place and if it will be overseen by the TCEQ. They also noted that the operating company should not be in the chain-of-custody of the samples.

RESPONSE 39:

TCEQ's rules prescribe the process permittees must use to collect and analyze effluent monitoring samples.²⁷ The rules include requiring each effluent report shall have two signatures, one of which must be the superintendent of the wastewater treatment facility or a person in a similar position.²⁸ Additionally, the rules specify that any false statement on any report may result in the imposition of criminal and/or civil penalties as provided by state law.²⁹

In addition, the TCEQ's Office of Compliance and Enforcement ensures compliance with applicable state and federal regulations. The Region 12 office is required to conduct a mandatory comprehensive compliance investigation (CCI) at minor facilities (facilities with permitted flow less than 1 million gpd) once every five fiscal years. Additional mandatory investigations can be required if the facility is categorized as significant noncompliance (SNC). SNC is determined by the Compliance Monitoring Section of the TCEQ and is based on self-reported effluent violations.

If the Executive Director finds that the Undine facility is out of compliance with the terms or conditions of the permit, Undine may be subject to enforcement. If anyone experiences any suspected incidents of noncompliance with the permit or TCEQ rules, they may report these to the TCEQ by calling the toll-free number,

²⁷ 30 TAC §§ 319.4-319.12.

²⁸ 30 TAC § 319.8.

²⁹ 30 TAC § 319.7(e).

1-888-777-3186, or the TCEQ Region 12 Office in Houston at (713) 767-3500. Citizen complaints may also be filed on-line at <https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html>. If Undine fails to comply with all requirements of the permit, it may be subject to enforcement action.

COMMENT 40:

David Shockley asked why the draft permit provides a peak flow of four times the average flow.

RESPONSE 40:

In accordance with 30 TAC § 217.32, when site-specific data is unavailable, the peak flow must be determined by multiplying the design flow by a factor of at least 4.0. If site-specific data or projections are available, the peak flow must be based on the site-specific data. The 2-hour peak flow is the highest two-hour flow expected under any operational conditions, including times of high rainfall, based on a two-year, 24-hour storm or a prolonged period of wet weather.

COMMENT 41:

David Shockley asked if the WWTF will be a green plant.

RESPONSE 41:

The proposed wastewater treatment facility (WWTF) does not contain technology that would be considered to be a green plant. According to the application, The Reserve at Angleton WWTF will be an activated sludge process plant operated in the complete mix mode. The Executive Director does not have the authority to mandate the type of treatment technology to treat the effluent if the applicant adheres to the rules and provisions under TWC Chapter 26 and 30 TAC Chapters 217, 305, 307 and 309. If Undine chooses to change the proposed facility, then updated applications will need to be submitted to reflect that change. As previously stated, the plans and specifications will be reviewed and must meet the design criteria set in 30 TAC Chapter 217 as required in Other Requirement No. 6 of the draft permit.

COMMENT 42:

Timothy Strickland asked how far the effluent will be piped before it enters the bayou.

RESPONSE 42:

According to the application, the treated effluent from the Undine WWTF will be piped approximately 300 feet to Angleton Drainage District Ditch No. 7. The wastewater will flow approximately 0.7 km (0.4 mile) to Angleton Drainage District No. 22 thence flow approximately 3.7 km (2.3 miles) further until reaching Bastrop Bayou Tidal.

COMMENT 43:

Billy Joe Walcik stated that the Executive Director's determination that "no significant degradation of water quality is expected" indicate the staff's research is very weak and staff used "bureaucratic double talk" in case there are any unexpected negative impacts to the ecosystem. Similarly, Tammy Zieber asked how the Executive Director determined that there would not be any significant degradation of the Bayou. Tammy Zieber asked if any samples were taken as part of the determination.

RESPONSE 43:

The TCEQ acknowledges the comment that there were no [water] samples collected. The TCEQ's technical evaluations of the proposed discharge are designed to preclude water quality degradation from the treated effluent. Careful consideration is given to the proposed effluent flow amount and type, which is domestic wastewater. Careful consideration also is given to the receiving waterbodies, with respect to flow status and associated aquatic life use (ALU). The flow status and ALU inform the dissolved oxygen analysis discussed below.

The proposed discharge is via pipe to Angleton Drainage District ditch (ADD) No. 7, which is freshwater, intermittent flow status, and minimal ALU. Further downstream, ADD ditch No. 7 is received by ADD ditch No. 22, which has the same flow status and ALU until it becomes tidal, about 1.83 miles (2.95 km) downstream of the first ditch. The tidal portion of ADD ditch No. 22 was designated as having high ALU, especially because of its connectivity with Bastrop Bayou Tidal.

A dissolved oxygen analysis of the proposed discharge was conducted using an uncalibrated QUAL-TX model to assess the potential impacts of major oxygen-demanding constituents on dissolved oxygen levels in the receiving water bodies. To ensure that dissolved oxygen modeling results and corresponding effluent limit recommendations are conservative and protective under all conditions, the proposed discharge was evaluated under what are expected to be the most unfavorable of environmental conditions, specifically hot and dry summertime conditions. Each proposed flow phase was modeled at its full proposed flow (interim phase = 0.0625 MGD, interim II phase = 0.125 MGD, and final phase = 0.25 MGD). This combination of conditions is a conservative, worst-case scenario that is unlikely to occur. Even under these conservative model assumptions, instream dissolved oxygen levels were predicted to be maintained for the Angleton Drainage District Ditch no. 7 (2.0 mg/L), Angleton Drainage District Ditch no. 22 (non-tidal) (2.0 mg/L), Angleton Drainage District Ditch no. 22 (tidal) (4.0 mg/L), and Bastrop Bayou (tidal) (4.0 mg/L) at the effluent limits proposed by the applicant (i.e. 10 mg/L CBOD₅, 3 mg/L NH₃-N, and 4.0 mg/L DO).

COMMENT 44:

Billy Joe Walcik stated that according to page 3 of the draft permit Undine will add *E. coli*, ammonia-nitrogen, suspended solids, chloride, and other substances to the receiving water.

RESPONSE 44:

The draft permit on pages 2 - 2b includes effluent limitations that are required to be monitored and may not be exceeded by Undine. The draft permit does not require Undine to add pollutants to the receiving water, rather it limits the amount of certain pollutants that may be discharged to Angleton Drainage District Ditch 7. The effluent limit for ammonia nitrogen ($\text{NH}_3\text{-N}$) included in the draft permit was derived during the dissolved oxygen modeling analysis of the proposed discharge. The ammonia nitrogen effluent limit is part of an 'effluent set' of oxygen-demanding constituents that also includes carbonaceous oxygen demand (CBOD_5) in addition to a minimum dissolved oxygen concentration limit for the effluent itself. The proposed discharge is modeled to ensure that instream dissolved oxygen levels will be maintained above the criteria established for the receiving waters, even during the most restrictive of conditions, typically represented by hot and dry summertime conditions. The effluent limits included in the draft permit are predicted to be adequate to ensure that dissolved oxygen levels will be maintained above the criteria established for Angleton Drainage District Ditch 7 (2.0 mg/L), Angleton Drainage District Ditch 22 (non-tidal) (2.0 mg/L), and Angleton Drainage District Ditch 22 (tidal) (4.0 mg/L).

Total suspended solids (TSS) limits are set in conjunction with other permitted effluent limits and any applicable watershed rule requirements. Furthermore, the permit includes a condition, consistent with the TSWQS's general criteria to protect aesthetic parameters of water quality, that there shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil. The TSS limit included in the draft permit is of a typical value for domestic wastewater discharge permits with secondary treatment.

The rules in 30 TAC § 309.3(g)(1) require that disinfection of domestic wastewater must be protective of both public health and aquatic life, however the rules do not require a specific method of disinfection. A permittee may disinfect domestic wastewater through use of 1) chlorination, 2) ultra-violet light, or 3) an equivalent method of disinfection with prior approval of the Executive Director. For this facility, Undine has chosen chlorine disinfection. Chlorination may be via gaseous, liquid, or tablet forms. Chlorine is the one of the most practical and effective means of disinfection because it can kill disease-causing bacteria and nuisance organisms and can eliminate certain noxious odors during disinfection.³⁰ The permit limitation for maximum total chlorine residual is 4.0 mg/l to be monitored five times per week.³¹ The draft permit also includes bacteria limits and monitoring requirements to verify proper disinfection. The treated effluent shall meet a daily average bacteria limit of 126 colony-forming units (CFU) or most probable number (MPN) of *Escherichia coli* per 100 ml.

³⁰ U.S. EPA Wastewater Technology Fact Sheet- Chlorine Disinfection (EPA 832-F-99-062)

³¹ Undine Draft Permit, Effluent Limitations and Monitoring Requirements, page 2 - 2a; *see also* 30 Tex. Admin. Code § 309.3(g)(2).

COMMENT 45:

Billy Joe Walcik stated the prohibition on residential structures in the buffer zone is not environmentally friendly.

RESPONSE 45:

TCEQ's rules require applications to use one of three options to abate and control nuisance odors. 30 TAC § 309.13(e). Undine has opted to prohibit the construction of residential structures in the buffer zone. The buffer zone for the proposed WWTF is a distance of 150 feet from each wastewater treatment unit. This requirement is incorporated in the draft permit as Other Requirement No. 3.³² Therefore, nuisance odor is not expected to occur as a result of the permitted activities at the facility if the permittee operates the facility in compliance with TCEQ's rules and the terms and conditions of the draft permit.

If anyone experiences nuisance odor conditions or any other suspected incidents of noncompliance with the permit or TCEQ rules, they may be reported to TCEQ by calling toll-free 1-888-777-3186, or the TCEQ Region 12 Office in Houston at (713) 767-3500. Citizen complaints may also be filed on-line at <http://www2.tceq.texas.gov/oce/complaints/index.cfm>.

Moreover, the permit does not limit the ability of an individual to seek legal remedies against the applicant regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that may interfere with the normal use and enjoyment of property.

COMMENT 46:

Tammi Zieber asked if a TMDL has been done for salinity; if not, Ms. Zieber recommends that one be done.

RESPONSE 46:

Currently, no TMDL projects have been developed for the Bastrop Bayou Tidal watershed, nor are any currently underway.

COMMENT 47:

Tammi Zieber asked what type of testing was done to ensure the salinity of the water will not change at the entrance of ditch 22 into the bayou or at any other location.

RESPONSE 47:

Salinity for Angleton Drainage District Ditch No. 22 (tidal portion) and Bastrop Bayou was not tested. However, water quality data (which included salinity values) was pulled from two Surface Water Quality Monitoring stations. One station (ID 18502) was located upstream from where Drainage Ditch No. 22 enters Bastrop Bayou while the other station (ID 18503) is located downstream. Salinity data pulled from these

³² Undine Draft Permit, Other Requirements, Item No. 3, page 34.

stations indicated that the salinity of Bastrop Bayou at the location where this discharge enters to be freshwater (i.e. < 2 parts per thousand) conditions most of the time.

COMMENT 48:

Tammi Zieber asked if: 1) there has been any testing to determine if spike proteins from the COVID vaccine will survive the treatment process; 2) if medications will be removed during the treatment process; 3) what could be in the discharge that will not be tested for and 4) if the treatment process will remove pharmaceuticals. Similarly, CCA expressed concern over the discharge of endocrine disruptors. Additionally, James Perouty noted that drugs will be dumped in the water, which will affect the food chain.

RESPONSE 48:

The TCEQ has not investigated the potential effects of emerging contaminants, which includes Pharmaceuticals and Personal Care Products (PPCPs), in effluent. Neither the TCEQ nor the EPA has promulgated rules or criteria limiting emerging contaminants in wastewater. The EPA is investigating emerging contaminants and has stated that scientists have not found evidence of adverse human health effects from emerging contaminants in the environment. Removal of some emerging contaminants has been documented during municipal wastewater treatment; however, standard removal efficiencies have not been established. In addition, there are currently no federal or state effluent limits for emerging contaminants. The science on emerging contaminants is currently evolving, and while the EPA and other agencies continue to study the presence of emerging contaminants, there is currently no clear regulatory regime available to address the treatment of emerging contaminants in domestic wastewater. Accordingly, neither the TCEQ nor the EPA has rules on the treatment of emerging contaminants in domestic wastewater.

COMMENT 49:

Julia Lewis expressed concerns over odor from the facility.

RESPONSE 49:

All wastewater treatment facilities have the potential to generate odors. To control and abate odors the TCEQ rules require domestic wastewater treatment facilities to meet buffer zone requirements for the abatement and control of nuisance odor according to 30 TAC § 309.13(e), which provides three options for applicants to satisfy the nuisance odor abatement and control requirements. Undine can comply with the rule by: 1) ownership of the buffer zone area; 2) restrictive easement from the adjacent property owners for any part of the buffer zone not owned by Undine; or 3) providing nuisance odor control.³³

According to its application, Undine intends to comply with the requirement to abate and control nuisance of odor by legal restrictions prohibiting the construction of

³³ 30 TEX. ADMIN. CODE § 309.13(e).

residences within the buffer zone.³⁴ This requirement is incorporated in the draft permit.³⁵ These legal restrictions shall be in accordance with 30 TAC § 309.13(e)(3). Therefore, nuisance odor is not expected to occur as a result of the permitted activities at the facility if the permittee operates the facility in compliance with TCEQ's rules and the terms and conditions of the draft permit.

If anyone experiences nuisance odor conditions or any other suspected incidents of noncompliance with the permit or TCEQ rules, they may be reported to TCEQ by calling toll-free 1-888-777-3186, or the TCEQ Region 12 Office in Houston at (210) 490-3096. Citizen complaints may also be filed online at: <https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html>.

Moreover, the permit does not limit the ability of an individual to seek legal remedies against Undine regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that may interfere with the normal use and enjoyment of property.

COMMENT 50:

Julia Lewis asked how the sewage will be treated.

RESPONSE 50:

The wastewater will be treated by the Reserve at Angleton Wastewater Treatment Facility which is proposed to 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.

An activated sludge process plant is a biological wastewater treatment process in which activated sludge is aerated. Activated sludge is defined as a collection of actively growing biological organisms that results from combining wastewater, organisms, and air in an aerated process. The activated sludge microorganisms are subsequently separated from the wastewater and wasted or returned to the process.

COMMENT 51:

Michael Durham, Eddie Gene Gentry, Bridget L. Hines, Regan Meredith Marshall, and Bruno Reich expressed general health concerns.

RESPONSE 51:

As specified in the Texas Surface Water Quality Standards (TSWQS), Water in the State must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock and domestic animals resulting from contact with water, consumption of

³⁴ Undine Permit Application, Administrative Report, 1.1, Item No. 2(b), page 2.

³⁵ Undine Draft Permit, Other Requirements, Item No. 3, page 34.

aquatic organisms, consumption of water or any combination of the three. Water in the state must also be maintained to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water, or any combination of the three. The draft permit includes provisions to ensure that the TSWQS will be maintained.

Furthermore, conventional domestic sewage does not typically contain toxic compounds in measurable quantities that might result in toxic effects in the receiving waterbodies, unless there are significant industrial users contributing to the waste stream. According to the Undine application, there will not be any industrial users the proposed development will be a residential development.

COMMENT 52:

Michael Durham stated that he has heard that the treated wastewater will be safe to drink. Michael Durham also noted that no one from the TCEQ would drink the effluent.

RESPONSE 52:

TCEQ's rules do not require that domestic wastewater be treated to potable standards before it is discharged to water in the state, rather the rules ensure that the surface water is protective when it is accidentally ingested. The TSWQS require that water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, and domestic animals resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three. Water in the state must also be maintained to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water, or any combination of the three.

COMMENT 53:

Michael Durham stated that it is not natural to dump wastewater to the waterways and treated water should not be allowed in any Texas water way.

RESPONSE 53:

Discharge to surface water of treated domestic waste is common across the United States. As noted by the EPA:

[t]he collection and treatment of domestic sewage and wastewater is vital to public health and clean water. It is among the most important factors responsible for the general level of good health enjoyed in the United States. Sewers collect sewage and wastewater from homes, businesses, and industries and deliver it to wastewater treatment facilities before it is discharged to water bodies or land, or reused.

<https://www.epa.gov/npdes/municipal-wastewater>

TCEQ was given authority by the legislature to issue permits for the discharge of waste into or adjacent to water in the state. Texas Water Code § 26.027. These permits, ensure that discharges to surface water in Texas do not cause degradation. For

additional information regarding the TPDES program, please visit TCEQ's wastewater and stormwater website at: <https://www.tceq.texas.gov/permitting/wastewater>.

COMMENT 54:

George Erchinger stated that the proposed WWTF will limit the tidal flow at his location because of the volume for fresh water permitted. Similarly, the City of Richwood City Council (Eric Foerster) expressed a concern over tidal water.

RESPONSE 54:

As a part of the technical review, TCEQ obtained surface water quality monitoring data from stations both upstream and downstream where this discharge would enter Bastrop Bayou Tidal. Analysis of this data showed that Bastrop Bayou Tidal already exhibits freshwater conditions (salinity levels <2 parts per thousand (ppt)) most of the time. Approximately 70 percent of the measurements from a station upstream of where the proposed discharge would enter Bastrop Bayou showed salinities less than 2 ppt, and approximately 62% of the measurements from the nearest station downstream of where the proposed discharge would enter Bastrop Bayou had salinities less than 2 ppt. Given that these data demonstrate characteristics of a predominantly freshwater system in the upper reaches of Bastrop Bayou and that the proposed discharge is expected to represent only a fraction of the freshwater inputs into the system compared to sources such as stormwater runoff contributions, it is anticipated that the proposed discharge will have a negligible impact on the salinity gradient of Bastrop Bayou.

COMMENT 55:

Tammi Zieber asked if there has been any testing to ensure the salinity of the water will not change at the entrance of Ditch 22 to the bayou or any other location.

RESPONSE 55:

Salinity for Angleton Drainage District Ditch No. 22 (tidal portion) or Bastrop Bayou was not tested. However, water quality data (which included salinity values) was pulled from two Surface Water Quality Monitoring stations. One station (ID 18502) was located upstream from where Drainage Ditch No. 22 enters Bastrop Bayou while the other station (ID 18503) is located downstream. Salinity data pulled from these stations indicated that the salinity of Bastrop Bayou at the location where this discharge enters to be freshwater (i.e. < 2 ppt) conditions most of the time.

COMMENT 56:

CCA stated that the TCEQ should consider the impact of all freshwater inputs to determine the impact on Bastrop Bayou.

RESPONSE 56:

A dissolved oxygen analysis of the proposed discharge was conducted using an uncalibrated QUAL-TX model to assess the potential impacts of major oxygen-demanding constituents on dissolved oxygen levels in the receiving water bodies. In order to ensure that dissolved oxygen modeling results and corresponding effluent

limit recommendations are conservative and protective under all conditions, the proposed discharge was evaluated under what are expected to be the most unfavorable of environmental conditions, specifically hot and dry summertime conditions. In this review, the discharge was modeled with a presumption of zero background streamflow (i.e., dilution), with the only freshwater flow present in the model being from the proposed discharge. Each proposed flow phase was modeled at its full proposed flow (interim phase = 0.0625 MGD, interim II phase = 0.125 MGD, & final phase = 0.25 MGD). This combination of conditions is a conservative, worst-case scenario that is unlikely to occur.

COMMENT 57:

The persons in Attachment F expressed concern over the impact of the draft permit on the ecosystem. April Hanes expressed concern that the draft permit would limit sustainability. Similarly, the persons in Attachment G expressed concerns that the proposed discharge will negatively impact aquatic species.

RESPONSE 57:

During the technical review, the Water Quality Standards Implementation reviewer determined that the treated effluent should not disrupt the ecosystem or limit sustainability.

An antidegradation review of the receiving waters was done in accordance with 30 TAC § 307.5 and the IPs (June 2010). 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.

The draft permit was developed to protect aquatic life and human health in accordance with the Texas Surface Water Quality Standards and was established to be protective of human health and the environment, provided that the WWTF operates and maintains the facility according to TCEQ rules and the requirements in the draft permit. As part of the permit application process, TCEQ must determine the uses of the receiving water and set effluent limits that are protective of those uses. The effluent limits in the draft permit are set to maintain and protect the existing instream uses.

Angleton Drainage District Ditch No. 7 and Angleton Drainage District Ditch No. 22 (non-tidal) have been assigned Minimal Aquatic Life Use and corresponding 2.0 mg/L dissolved oxygen (DO) criterion while Angleton Drainage District Ditch no. 22 (tidal) and Bastrop Bayou have been assigned High Aquatic Life Use and corresponding 4.0 mg/L DO criterion. These criteria are designed to ensure that aquatic life will be protected. TCEQ staff performed a DO modeling analysis of the proposed discharge using an uncalibrated QUAL-TX model. Based on model results, the effluent limits

included in the draft permit for Carbonaceous Biochemical Oxygen Demand (5-day) (CBOD₅), ammonia-nitrogen, and minimum effluent DO for the three proposed flow phases are predicted to be adequate to ensure that instream DO levels will be maintained consistent with these established criteria, and thus aquatic life use protected.

COMMENT 58:

The persons in Attachment J expressed concern over the impact of the draft permit on wildlife. Similarly, Kristin Bulanek, Kenneth R. Purswell, and Robert Wills expressed concern over the negative impact of the discharge on the Wildlife Refuge.

RESPONSE 58:

As specified in the TSWQS, water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, which includes wildlife, livestock, and domestic animals resulting from contact with water, consumption of aquatic organisms, consumption of water or any combination of the three. Water in the state must be maintained to preclude adverse toxic effects on human health resulting from primary contact recreation, consumption of aquatic organisms, consumption of drinking water, or any combination of the three. The draft permit includes provisions to ensure that the TSWQS will be maintained.

COMMENT 59:

Billy Joe Walcik stated that there is a substantial population of the Piping Plover in the area. CCA stated that the Executive Director did not perform an adequate assessment of the impact of the proposed discharge on federally endangered and threatened aquatic and aquatic dependent species. CCA recommended that the Executive Director re-evaluate the assessment.

RESPONSE 59:

The TCEQ acknowledges that the piping plover, *Charadrius melodus* Ord, can occur in Brazoria County. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the Texas Pollutant Discharge Elimination System (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 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.

COMMENT 60:

Sherri Fossati commented that protected grasses, that will not survive in freshwater, grow at her bulkhead.

RESPONSE 60:

The Water Quality Standards Implementation reviewer determined that the treated effluent should not harm protected [sea] grasses that may occur in Bastrop Bay or Christmas Bay due to the relatively small amount of flow, relative to the volume of ambient water in the bays.

COMMENT 61:

Michael Durham commented that TCEQ has not done the research necessary to determine how the discharge will impact the ecosystem.

RESPONSE 61:

The TCEQ maintains Surface Water Quality Monitoring (SWQM) Stations in waterbodies throughout Texas, and specific to this permit application, in Bastrop Bayou. The SWQM data collected from these monitoring stations are utilized to inform TCEQ of water quality concerns and impairments. The SWQM data in Bastrop Bayou informed the technical reviewers if there potentially may be changes in salinity from the proposed discharge.

A dissolved oxygen analysis of the proposed discharge was conducted using an uncalibrated QUAL-TX model to assess the potential impacts of major oxygen-demanding constituents on dissolved oxygen levels in the receiving water bodies. The technical review for the dissolved oxygen modeling analysis included gathering and assessing all relevant data from a variety of sources including: the submitted application, USGS topographic maps and aerial imagery, and Surface Water Quality Monitoring data for Bastrop Bayou. Results of the dissolved oxygen modeling review indicate that the dissolved oxygen levels in all receiving waterbodies will be maintained and thus protective of the aquatic life uses established by the Standards Implementation Team.

COMMENT 62:

Billy Joe Walcki noted that TPWD recognizes Bastrop Bayou as an ecologically significant waterbody.

RESPONSE 62:

The TCEQ acknowledges the comment regarding TPWD's recognition of Bastrop Bayou as ecologically significant. Similarly, TCEQ has designated Bastrop Bayou as having high aquatic life use, which also includes sustainable fishery for human health considerations.

COMMENT 63:

CCA expressed concern over the impact of an increase in fecal coliforms on fisheries, specifically oysters. CCA noted that oysters are recreationally and commercially harvested in West Galveston Bay.

RESPONSE 63:

The draft permit includes bacteria limits, which will protect the receiving waters. Regarding the potential fecal coliform in West Galveston Bay, the distance from

the proposed discharge is approximately 2.8 miles (4.5 km) to Bastrop Bayou Tidal, which is greater than ten miles before it reaches West Galveston Bay. With the small amount of proposed flow, the treated effluent should not harm the fisheries or oysters in Bastrop Bayou Tidal or West Galveston Bay.

COMMENT 64:

Lisa Brewer, Michael Durham, and Jason Hains stated that the public notice was not sufficient. Michael Durham stated that the notice was published in “a third rate newspaper in Brazoria County that no one purchases.” April Hanes stated that she has not seen any signs posted, nor did she receive mailed notice of the draft permit.

RESPONSE 64:

TCEQ’s rules require that at least two notices be published. The first notice is the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI), which must be published within 30 days after the Executive Director declares that the application is administratively complete. 30 TAC § 39.551(b). The applicant chooses which newspaper the notice is published in, but the newspaper must comply with TCEQ’s rules. The rules require the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) be published in the newspaper of largest circulation in the county where the facility is located or proposed to be located or, if the facility is located or proposed to be located in a municipality, the applicant shall publish notice in any newspaper of general circulation in the municipality. 30 TAC § 39.405. Undine published the NORI in English and Spanish on January 29 -30, 2022, in *The Facts*.

After the Executive Director completes the technical review, the applicant must publish the Notice of Application and Preliminary Decision (NAPD). 30 TAC § 39.551(c). Undine published the Notice of Application and Preliminary Decision (NAPD) in English on March 31, 2022 in *The Facts*. The rules require that the NAPD be published in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located.

If a public meeting is held, notice of the public meeting must be published. 30 TAC § 55.154. 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.

Additionally, as required, Undine provided Affected Landowner Information in its application as Attachment J. Attachment J includes information regarding the property owners on all sides of the proposed WWTF and on both sides of the discharge route for one mile from the outfall. As required by 30 TAC §§ 39.413 and 39.551, the TCEQ’s Office of Chief Clerk mailed both the NORI and NAPD to the landowners named on the application map.

Finally, applicants for wastewater discharge permits are not required to post signs.

COMMENT 65:

Representative Cody Vasut and the persons in Attachment H expressed concern over the negative impact on recreation.

RESPONSE 65:

As specified in the TSWQS, water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, and domestic animals resulting from contact with water, consumption of aquatic organisms, consumption of water, or any combination of the three. Water in the state must also be maintained to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water, or any combination of the three. The draft permit includes provisions to ensure that the TSWQS will be maintained.

COMMENT 66:

Kristin Bulanek, Mark Watts, Hugh Landon, and Michael Shapley stated the proposed discharge will ruin their way of life.

RESPONSE 66:

The TCEQ was charged by the Texas Legislature to maintain the quality of water in Texas, consistent with public health and enjoyment; thus, TCEQ's jurisdiction in a wastewater permit application is limited to water quality issues, and it does not have authorization to consider quality of life, as long as water quality is maintained. The draft permit, however, does not allow the permit holder to create or maintain a nuisance that interferes with a landowner's use and enjoyment of his or her property. The permit does not limit the ability of a landowner to seek relief from a court in response to activities that interfere with a landowner's use and enjoyment of his or her property

COMMENT 67:

The persons in Attachment I expressed concern that the proposed discharge will cause additional flooding. Renée Cooper asked who has responsibility over the potential impact of flooding caused by the discharge. Similarly, Lisa Brewer stated that the bayous and bays cannot handle more water. James and Lynn Stockman asked if Undine would be willing to dredge the bayou to prevent flooding.

RESPONSE 67:

TPDES permits establish terms and conditions that are intended to provide water quality pollution control, therefore, the Executive Director's review of an application for a TPDES permit focuses on controlling the discharge of pollutants into water in the state. The TCEQ does not have jurisdiction to address flooding, the impact of an increase in water in the receiving waterbody, or dredging in the wastewater permitting process, unless there is an associated water quality concern.

Undine's draft permit includes effluent limits and other requirements that it must meet even during rainfall events and periods of flooding. Additionally, the draft permit does not authorize any invasion of personal rights nor any violation of federal,

state, or local laws or regulations. For information on flooding, please contact your local floodplain administrator.

COMMENT 68:

Betsy David, Glen David, and Lauren Milliorn expressed general safety concerns.

RESPONSE 68:

While the Texas Legislature has given the TCEQ the responsibility to protect water quality, the water quality permitting process is limited to controlling the discharge of pollutants into or adjacent to water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. The TCEQ does not have the authority to address general safety concerns that are not related to the draft permit.

However, the permit does not limit the ability of an individual to seek legal remedies against Undine regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that may interfere with the normal use and enjoyment of property.

COMMENT 69:

Rhonda Harley stated that the Brazoria County Landfill is in the area, and she does not want more toxins in the neighborhood. Similarly, Patti and David Polasek noted that during Harvey two feet of silt from the landfill was deposited against their property.

RESPONSE 69:

The TPDES permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. The impact of a landfill on neighbors is outside the scope of the evaluation of a wastewater discharge permit application.

COMMENT 70:

James Stockman and Billy Joe Walcik expressed concern over silting and sediment.

RESPONSE 70:

The TCEQ was charged by the Texas Legislature to maintain the quality of water in Texas, consistent with public health and enjoyment; thus, TCEQ's jurisdiction in a wastewater permit application is limited to water quality issues, and it does not have authorization to consider silting or sediment issues, as long as water quality is maintained. The discharge is not expected to cause silting or result in sediments if the conditions in the draft permit are met. Moreover, the wastewater permit, does not allow the permit holder to create or maintain a nuisance that interferes with a landowner's use and enjoyment of his or her property. The permit does not limit the ability of a landowner to seek relief from a court in response to activities that interfere with a landowner's use and enjoyment of his or her property.

COMMENT 71:

Tammi Zieber expressed concern that Undine's decision is financial.

RESPONSE 71:

Section 26.027 of the Texas Water Code authorizes the TCEQ to issue permits to control the discharge of wastes or pollutants into state waters and to protect the water quality of the state's rivers, lakes, and coastal waters. The water quality permitting process is limited to controlling the discharge of pollutants into or adjacent to water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. The TCEQ does not have jurisdiction under the Texas Water Code or its regulations to consider the motivation of the Applicant.

COMMENT 72:

Bill Waite expressed concern over the type of neighborhood Undine will serve.

RESPONSE 72:

The TPDES permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. The type of neighborhood that will be served by the WWTF is outside the scope of the evaluation of a wastewater discharge permit application.

COMMENT 73:

Ronnie Gene Augry, Kathy Edwards, Jason Hains, Kenneth R. Purswell, and Linda Strickland expressed concern that the proposed discharge will negatively impact private property. Similarly, Ronnie Gene Augry, Ashlyne Davidson, Jimmy Davidson, and Mark Watts expressed concern that the proposed WWTF will negatively impact property values.

RESPONSE 73:

The TCEQ does not have jurisdiction to review the effect, the discharge or WWTF might have on property values of downstream landowners in reviewing a domestic wastewater discharge permit application. 30 TAC § 305.122(d) provides that the issuance of the permit does not authorize any injuries to persons or property, an invasion of other property rights, or any infringement of state or local statutes or regulations. Additionally, 30 TAC § 305.122(d) and 30 TAC § 305.125(16) provide that the issuance of a permit does not convey any property right or exclusive privilege. The draft permit incorporates those rules in the draft permit.

Moreover, the draft permit does not limit the ability of an individual to seek legal remedies against Undine regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that may interfere with the normal use and enjoyment of property.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

The Executive Director did not make any changes to the draft permit in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker
Executive Director

Charmaine Backens, Deputy Director
Environmental Law Division



By: _____
Kathy Humphreys, Staff Attorney
Environmental Law Division
State Bar No. 24006911
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone (512) 239-3417

CERTIFICATE OF SERVICE

I certify that on November 8, 2022, the Executive Director's Response to Public Comment for Permit No. WQ0016046001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Kathy Humphreys, Staff Attorney
Environmental Law Division
State Bar No. 24006911
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone (512) 239-3417

ATTACHMENT A

ALL COMMENTERS

Elected Officials

Senator Joan Huffman
Representative Cody Vasut
The Honorable Steve M.
Boykin
City Council of the City of
Richwood,
Brazoria County
Commissioners Court

Members of the Public

Ronnie Gene Augry
Jamie Ballaurd
Misty Bays
Candice Berg
Gary Billingsley
Shane Bonnot (behalf of
Costal Conservation
Association)
Lisa Brewer
Deryll Mark Broaddus
Sheryl Broaddus
Brennan Browning
Kristin Bulanek
Kevin Buchannan
Evan W Burris
Mary Burris
Kathy Cagel
Joan Carlson
Adam Contreras
Renee Cooper
Monta Cothron
Carole Cravinho
Mary Spears Crosby
Jacqueline Cunningham
Betsy David
Glen David
Ashlyne Davidson
Aubree Davidson
Jimmy Davidson
Jerry Lee Davis, JR
Juan L. Davis
Dianne Denham
Justin Duke
Michael Durham
Felecia Duval
Rodney Dwire

Charles Edwards
Kathy Edwards
Richard Elliott
Jan Elza
Steven Elza
George Erchinger
Sherrie Felder
Dana Fitze
David Fossati
Sherri Fossati
Gary Gann
Eddie Gene Gentry
April Hanes
Jason Hanes
Rhonda Harley
Gregory Hawkins, Jr.
David Henson
Cuthrell Shane Hicks
Bridget L. Hines
Michael Lee Holt
Marcus Jones
Monica Jones
Edwin Keonitzer
Frances Anne Keonitzer
Richard L. Kerr, Jr.
Hugh Landon
Julia Lewis
Vanessa Marlin
Dr. Barbara Marino
Colton Marino
Paul Marino
Regan Meredith Marshall
Irma McKinney
Kevin McKinney
James Arthur Meyer
Doug Miller
Lauren Milliorn
Ernestina Mook
Alyssa Michelle Moyle
Gilner Murrell
Justin David Nesrsta
Samantha Newton
Geneule Estrada Pee
Gerald Peliter
Mattie Moore Perouty
James W. Perouty
Amy Phillips

James Phillips
Shirley Phillips
Kenneth M Plato
Patti Polasek
Patti and David Polasek
Emil E. Prihoda
Melody Purnell
Bob Purnell
Kenneth R. Purswell
Bruno Reich
Barry T. Reynolds
Lawanna Reynolds
Lisa Ridenour
Gene Roberts
Bill Joseph Russo
Jennifer Russo
Frances Schultz
Michael Shapley
David Shockley
Josh Strawn
Linda Stickland
Timothy Strickland
James and Lynn Stockman
Kevin Tilley
Jane Tumlinson
Bruce Vincent
Bill Waite
Janet Waite
Billy Joe Walcik
Donna Walker
Janie Walthal
Hunter Weaver
Mark Webb
Mark Watts
Brandy Weidner
James Wells
Robert Wills
Reverend Robert V Willis,
III
Linzie Womack
Carole Zieber
Charles Zieber
Tammi Zieber
Harper Zlebis
Jodi Ziehl

Attachment B

General Objections

Elected Officials

Senator Joan Huffman
Mayor Steve Boykin
Precinct 2 County
Commissioner Ryan Cade
County Commissioner
David Linder

Members of the Public

Ronnie Gene Augry
Jamie Ballaurd
Misty Bays
Candice Berg
Gary Billingsley
Shane Bonnot (behalf of
Costal Conservation
Association)
Lisa Brewer
Deryll Mark Broadus
Sheryl Broadus
Brennan Browning
Kristin Bulanek
Kevin Buchannan
Evan W Burris
Mary Burris
Joan Carlson
Monta Cothron
Carole Cravinho
Mary Spears Crosby
Jacqueline Cunningham
Betsy David
Glen David
Ashlyne Davidson
Aubree Davidson
Jimmy Davidson
Jerry Lee Davis, JR
Juan L. Davis
Dianne Denham
Rodney Dwire

Justin Duke
Michael Durham
Felecia Duval
Charles Edwards
Kathy Edwards
Jan Elza
Steven Elza
Sherrie Felder
Dana Fitze
Gary Gann
Sherri Fossati
April Hanes
Jason Hanes
Rhonda Harley
Gregory Hawkins, Jr.
David Henson
Cuthrell Shane Hicks
Michael Lee Holt
Marcus Jones
Monica Jones
Edwin Keonitzer
Richard L Kerr, Jr.
Hugh Landon
Dr. Barbara Marino
Colton Marino
Paul Marino
James Arthur Meyer
Gilner Murrell
Irma McKinney
Kevin McKinney
Doug Miller
Lauren Milliorn
Ernestina Mook
Alyssa Michelle Moyle
Justin David Nesrsta
Samantha Newton
Geneule Estrada Pee
Gerald Peliter
Patti Polasek

Patti and David Polasek
Lisa Ridenour
Mattie Moore Perouty
James W. Perouty
James Phillips
Shirley Phillips
Emil E. Prihoda
Melody Purnell
Bob Purnell
Barry T. Reynolds
Lawanna Reynolds
Bill Joseph Russo
Jennifer Russo
Gene Roberts
Frances Schultz
Michael Shapley
Linda Strickland
Kevin Tilley
Jane Tumlinson
Bruce Vincent
Bill Waite
Janet Waite
Donna Walker
Billy Joe Walcick
Janie Walthal
Mark Watts
Hunter Weaver
Mark Webb
Brandy Weidner
James Wells
Robert Wills
Reverend Robert V Willis, III
Linzie Womack
Tammi Zieber
Charles Zieber
Harper Zlebis
Jodi Ziehl

Attachment C

Impact on Salinity Regime of Brackish Water System

City of Richwood - City Council
Betsy David
Glen David
Kathy Edwards
George Erchinger
Sherri Fossati
Gary Gann
Jason Hains
Gregory Hawkins, Jr.
Michael Lee Holt
Marcus Jones
Monica Jones
Edwin Keonitzer
Richard L Kerr, Jr.
Dr. Barbara Marino
Colton Marino
Paul Marino
Vanessa Marlin
Lauren Milliorn
Ernestina Mook

Mattie Moore Perouty
James W. Perouty
James Phillips
Shirley Phillips
Emil E. Prihoda
Melody Purnell
Bob Purnell
Kenneth R. Purswell
Barry T. Reynolds
Lawanna Reynolds
Bill Joseph Russo
Jennifer Russo
Jane Tumlinson
Janet Waite
Donna Walker
Mark Watts
James Wells
Robert Wills
Reverend Robert V Willis, III
Linzie Womack
Charles Zieber
Tammi Zieber

Attachment D

Impact on Aquatic Species Because of the Change in the Salinity Concentration

Betsy David
Glen David
Sherri Fossati
Gary Gann
Gregory Hawkins, Jr.
Michael Lee Holt
Monica Jones
Edwin Keonitzer
Richard L Kerr, Jr.
Dr. Barbara Marino
Colton Marino
Paul Marino
Vanessa Marlin
Lauren Milliorn
Ernestina Mook
Mattie Moore Perouty
James W. Perouty

James Phillips
Shirley Phillips
Emil E. Prihoda
Melody Purnell
Bob Purnell
Kenneth R. Purswell
Barry T. Reynolds
Lawanna Reynolds
Bill Joseph Russo
Jennifer Russo
Jane Tumlinson
Janet Waite
Donna Walker
Tammi Zieber
Charles Zieber
Mark Watts
Reverend Robert V Willis, III

Attachment E

Consumption of Fish and Quality of Seafood

Kristin Bulanek
Kevin Buchannan
Kathy Cagel
Betsy David
Glen David
Jerry Lee Davis, JR
Sherri Fossati
Gary Gann
Gregory Hawkins, Jr.
Michael Lee Holt
Edwin Keonitzer
Richard L Kerr, Jr.
Dr. Barbara Marino
Colton Marino
Paul Marino
Lauren Milliorn

Ernestina Mook
Mattie Moore Perouty
James W. Perouty
James Phillips
Shirley Phillips
Emil E. Prihoda
Melody Purnell
Bob Purnell
Barry T. Reynolds
Lawanna Reynolds
Bill Joseph Russo
Jennifer Russo
Frances Schultz
Jane Tumlinson
Janet Waite
Donna Walker
Mark Watts
Tammi Zieber
Charles Zieber

Attachment F

Negative Impact to Ecosystem

Misty Bays
Kristin Bulanek
Betsy David
Glen David
Ashlyne Davidson
Jimmy Davidson
Felecia Duval
Michael Durham
Steven Elza
Sherri Fossati
Vanessa Marlin
Alyssa Michelle Moyle
Justin David Nesrsta
Geneule Estrada Pee
Bill Joseph Russo
Josh Strawn
Billy Joe Walcik
Janie Walthal
Hunter Weaver
James Wells
Robert Wills
Reverend Robert V Willis, III
Linzie Womack

Attachment G
Negative Impact to Wildlife

Jamie Ballaurd
Sheryl Broaddus
Felecia Duval
April Hanes
Jason Hanes
Regan Meredith Marshall
Justin David Nesrsta
Gerald Peliter
Kenneth R. Purswell
David Shockley
Reverend Robert V Willis, III
Linzie Womack

Attachment H

Negative Impact to Recreation

Kristin Bulanek
Mary Spears Crosby
Jerry Lee Davis, JR
Michael Durham
Felecia Duval
Kathy Edwards
George Erchinger
Sherri Fossati
Rhonda Harley
Lauren Milliorn
Justin David Nesrsta
Geneule Estrada Pee
Kenneth R. Purswell
Frances Schultz
Josh Strawn
Timothy Strickland
Billy Joe Walcik
Mark Watts
Robert Wills
Harper Zlebis
Tammi Zieber

Attachment I

Flooding

Precinct 2 County Commissioner Ryan Cade
Precinct 4 County Commissioner David Linder

Gary Billingsley
Kevin Buchanan
Adam Contreras
Renee Cooper
Dianne Denham
Rodney Dwire
Charles Edwards
Kathy Edwards
Bridget L. Hines
Julia Lewis
Kevin McKinney
Justin David Nesrsta
Gerald Peliter
Bruno Reich
Gene Roberts
James and Lynn Stockman
David Shockley
Linda Strickland
Timothy Strickland
Bill Waite
Brandy Weidner
Reverend Robert V Willis, III
Robert Wills
Linzie Womack

Attachment J

General Negative Impact to Aquatic Species

Kathy Cagel
April Hanes
Jason Hanes
Marcus Jones
Julia Lewis
James Arthur Meyer
Justin David Nesrsta
Geneule Estrada Pee
David Shockley
Hunter Weaver
Reverend Robert V Willis, III
Linzie Womack