

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Erin E. Chancellor, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 5, 2023

TO: All interested persons.

RE: Kinder Morgan Petcoke, L.P.
TPDES Permit No. WQ0002659000

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any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.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 Harris County Public Library – Parker Williams Library, 10851 Scarsdale Boulevard, Houston, 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,



Laurie Gharis
Chief Clerk

LG/erg

Enclosure

**EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT
for
Kinder Morgan Petcoke, L.P.
TPDES Permit No. WQ0002659000**

The Executive Director has made the Response to Public Comment (RTC) for the application by Kinder Morgan Petcoke, L.P. for TPDES Permit No. WQ0002659000 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 (WQ0002659000) 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, are available for review 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 Harris County Public Library – Parker Williams Library, 10851 Scarsdale Boulevard, Houston, Texas.

MAILING LIST
for
Kinder Morgan Petcoke, L.P.
TPDES Permit No. WQ0002659000

FOR THE APPLICANT:

Brad Miller, Vice President
Kinder Morgan Petcoke, L.P.
300 Beltway Green Boulevard
Pasadena, Texas 77503

Bruce Daniel, P.E., Senior Engineer
TRC Environmental Corporation
14701 St. Mary's Lane, Suite 500
Houston, Texas 77079

INTERESTED PERSONS:

See attached.

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

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

Cole Gray, Technical Staff
Texas Commission on Environmental
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Water Quality Division MC-148
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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
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ENGELMAN , LINDSEY T
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AUSTIN TX 78701-1834

SCHLEMMER , KRISTEN
BAYOU CITY WATERKEEPER
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2010 NORTH LOOP W
HOUSTON TX 77018-8125

SHELLEY III , ADRIAN
PUBLIC CITIZENS TEXAS OFFICE
STE 2
309 E 11TH ST
AUSTIN TX 78701-2787

TOMASKOVIC , STEFANIA
THE HEALTHY PORT COMMUNITIES COALITION
STE 2
309 E 11TH ST
AUSTIN TX 78701-2787

TPDES PERMIT NO. WQ0002659000

APPLICATION BY	§	BEFORE THE
KINDER MORGAN PETCOKE, L.P.	§	
FOR A MAJOR AMENDMENT OF	§	TEXAS COMMISSION ON
TPDES PERMIT	§	
NO. WQ0002659000	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the application for a major amendment with renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002659000 by Kinder Morgan Petcoke, L.P. (applicant) and on the ED's preliminary decision. As required by Title 30 of the Texas Administrative Code (30 TAC) Section (§) 55.156, before this application is approved, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk received timely comments from Bayou City Waterkeeper (BCWK), Public Citizen, and the Healthy Port Communities Coalition (HPCC). This Response addresses all timely public comments received, whether or not withdrawn.

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 on the TCEQ web site at <http://www.tceq.texas.gov>.

I. BACKGROUND

A. Description of Facility

The Applicant, which operates Sims Bayou Petcoke Facility, a petroleum coke railcar handling facility, has applied for a major amendment with renewal of TPDES Permit No. WQ0002659000 to authorize the addition of process wastewater to Outfall 001. The draft permit authorizes the discharge of process wastewater and stormwater associated with industrial activity at a daily average flow at an intermittent and flow-variable rate via Outfall 001.

The facility is located at 9847 Lawndale Street, in the City of Houston, Harris County, Texas 77017. The effluent is discharged via Outfall 001 directly to Sims Bayou

Tidal in Segment No. 1007 of the San Jacinto River Basin. Under this permit action, process wastewater has been added to Outfall 001. The designated uses for Segment No. 1007 are navigation and industrial water supply.

B. Procedural Background

The TCEQ received the application on November 3, 2021, and declared it administratively complete on January 14, 2022. The ED completed the technical review of the application on April 14, 2022, and prepared a draft permit.

The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in the *Houston Chronical* on February 9, 2022, and the Notice of Application and Preliminary Decision (NAPD) in the *Houston Chronical* on August 10, 2022. The public comment period for this application closed on September 9, 2022. This application was filed on or after November 4, 2021; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature (1999) and Senate Bill 709, 84th Legislature, (2015), which are implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55.

C. Access to Rules, Laws and Records

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

- to access the Secretary of State Website: www.sos.state.tx.us;
- for TCEQ rules in Title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac/ (select “View the current Texas Administrative Code” on the right, then “Title 30 Environmental Quality”);
- for Texas statutes: <https://statutes.capitol.texas.gov/>;
- to access the TCEQ website: www.tceq.texas.gov (for downloadable rules in Adobe PDF format select “Rules and Rulemaking,” then “Current Rules and Regulations,” then “Download TCEQ Rules”);
- for Federal rules in Title 40 of the Code of Federal Regulations: http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab_02.tpl; and
- for Federal environmental laws: <https://www.epa.gov/laws-regulations>.

Commission records for this facility are available for viewing and copying at TCEQ’s main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk), until final action is taken. In light of directives to protect public health, to obtain documents located in the Office of the Chief Clerk, please leave a voice mail at (512) 239-3300 and someone will return your call within 24 hours during normal

business hours. In addition, 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/>. The permit application for this facility, Executive Director's Preliminary Decision, and the proposed permit are available for viewing and copying at Harris County Public Library - Parker Williams Library, 10851 Scarsdale Boulevard, Houston, Texas.

The ED has determined that the draft permit, if issued, meets all statutory and regulatory requirements and is protective of the environment, water quality, and human health. If you would like to file a complaint about the facility concerning its compliance with the provisions of its permit or with TCEQ rules, you may contact the TCEQ Regional Office (Region 12) in Houston, Texas at (713)-767-3500 or the statewide toll-free number at 1-888-777-3186 to address potential permit violations. In addition, complaints may be filed online at <https://www.tceq.texas.gov/compliance/complaints> or by sending an email to cmplaint@TCEQ.state.tx.us. If an inspection by the Regional Office finds that the facility is out of compliance, the facility may be subject to enforcement actions.

II. COMMENTS AND RESPONSES

COMMENT 1:

BCWK, Public Citizen, and HPCC commented that Kinder Morgan's permit amendment application does not provide enough information required for effective public comment. Specifically, they assert the following points: 1) the application does not contain a Stormwater Pollution Prevention Plan (SWPPP), 2) the application does not address the expected volume of contact and non-contact stormwater discharges and must provide sufficient information to determine how the new conveyances will affect the content of its discharges, and 3) the application does not include the underlying worksheets that support its conclusions on discharge characteristics.

RESPONSE 1:

Although the submission of a full SWP3 would be welcomed as part of the application for a major amendment, it is not a mandatory requirement for every major amendment under federal and Texas law. The cited rules [i.e. 40 CFR § 122.26(b)(14)(viii); 30 T.A.C. 281.25(a)(4)] establish the definition of stormwater

discharge associated with industrial activity and as one of the types of discharges which requires a TPDES Permit by law. They do not mandate the inclusion of a SWP3 for a major amendment. Further, in Worksheet 7.0 of the Technical Report, Item 1 requires the applicant to answer an applicability question on whether the discharges from any of the existing/proposed outfalls consist either “1) solely of stormwater discharges associated with industrial activities or 2) stormwater discharges associated with industrial activities and any of the allowable non-stormwater discharges”. If an applicant answers “yes” to the above question and wishes to authorize any of the above discharges under an individual permit, then under Item 4.e of the worksheet they would be required to describe any BMPs and controls the facility uses/proposes to prevent or effectively reduce pollution in stormwater discharges from the facility. The applicant seeks to discharge process wastewater and stormwater associated with industrial activity. Therefore, they are not required to provide such information. Additionally, while the existing permit does include a requirement (Other Requirement No. 4) for the permittee to re-evaluate and revise BMPs for the reduction of total suspended solids (TSS) in their discharge as necessary, it does not require the permittee to submit BMPs or develop a SWP3 for future permit actions.

In response to the point on the expected volume of contact and non-contact stormwater discharges, it is TCEQ policy to allow predominately stormwater-driven dischargers to list their discharge rate as “intermittent and flow-variable” due to the infeasibility of predicting rainfall patterns within a given area. Further, Kinder Morgan did provide a description of the conveyance that delivers effluent to their retention pond. To quote their application: “Rail car washing, rail car quench runoff, and stormwater in contact with oil products are discharged by gravity flow through Retention Pond #1 and a filter to Outfall 001.”

Concerning the comment that the Kinder Morgan application did not include all the underlying worksheets to support its conclusions on discharge characteristics, Kinder Morgan provided all worksheets as required by the TCEQ application process. Any additional information was either not required or extraneous to their permit action.

COMMENT 2:

BCWK, Public Citizen, and HPCC commented that Kinder Morgan’s major amendment conflicts with Texas’s antidegradation policy set forth under 30 Tex. Admin. Code § 307. Specifically, they argue that because the wastewater discharges contact the petroleum coke (“petcoke”) managed at the site, these discharges would seriously affect the quality and aesthetics of Sims Bayou and other nearby waters. As such, the authorization of these discharges would run counter to TCEQ’s regulatory goals under 30 T.A.C. § 307.1 to “...maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life” and under 30 T.A.C. § 307(b)(4) which states “[d]ischarges that cause pollution that are authorized by the Texas Water Code, the federal Clean Water Act, or other applicable laws must not lower water quality to the extent that the Texas Surface Water Quality Standards are not attained.”

RESPONSE 2:

An antidegradation review conducted by the Standards Implementation Team indicated that no significant degradation is expected to occur from this permit’s newly amended discharge. To quote the Standards Memo received on March 3, 2022: “In accordance with 30 Texas Administrative Code § 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 is not required since no exceptional, high, or intermediate aquatic life use water bodies have been identified in the discharge route. Existing uses will be maintained and protected.” Further, a modeling assessment conducted by the Water Quality Assessment Team indicated that no significant dissolved oxygen depletion is anticipated in the receiving waters. To quote the Modeling Memo received on March 4, 2022: “Due to the low concentration of oxygen demanding constituents expected in the wastewater, no significant dissolved oxygen depletion is anticipated in the receiving waters as a result of these discharges.” Based on the findings summarized in these two memos, the major amendment to add

process wastewater to the permittee's permitted discharge does not constitute a conflict with 30 Tex. Admin. Code § 307.

COMMENT 3:

BCWK, Public Citizen, and HPCC commented that Kinder Morgan's eight self-reported permit violations and compliance history rating of 57.00 should designate it as an "Unsatisfactory" performer. They argue that TCEQ must consider Kinder Morgan's poor compliance history when weighing the adequacy of the discharge limits and operating practices set out in its proposed permit amendment.

RESPONSE 3:

In response to the compliance history issue, the commenters appear to be mistaken in one of their assertions. According to TCEQ's Compliance History Search, Kinder Morgan (CN602846735) had a compliance history rating of 0.57 under the Rating Year of 2021, not 57.00. As such, they would fall under the classification of a "Satisfactory" performer. Concerning the notice of violation (NOV) issue, the self-reported effluent limitation violations documented in the Summary of Effluent Data section of the permit did not occur for more than three consecutive months, and the last such incident occurred on December 31, 2018, with no other violations over the last four years. As such, these violations did not occur with enough frequency to indicate an ongoing issue at the facility. The absence of additional violations to date also indicates that the cause of these exceedances has already been addressed by the permittee.

COMMENT 4:

BCWK, Public Citizen, and HPCC commented that Kinder Morgan does not address environmental justice concerns present in their permit amendment. Specifically, they argue that Kinder Morgan's permit amendment will affect a waterbody in a manner that will disproportionately harm a protected community. The area near the Kinder Morgan facility is composed of a population that is 96% people of color, 54% low-income, 46% with less than a high school education, and 35% linguistically isolated. Accordingly, they assert that TCEQ must reject the proposed permit amendment until Kinder Morgan provides sufficient information to assess this

disparate impact and determine whether it would potentially violate TCEQ's obligations under Title VI of the federal Civil Rights Act.

RESPONSE 4:

TCEQ and EPA coordinate on the rules and policies of both agencies, and the EPA has primary jurisdiction over environmental justice concerns. EPA's webpage, Environmental Justice | US EPA, notes that environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute and rules. Currently, there are no state statutes or TCEQ rules addressing the location of permitted facilities in areas with marginalized populations.

TCEQ is committed to protecting human health and the environment for all Texans throughout the state. When evaluating permits that would authorize wastewater discharge, TCEQ considers the surrounding community without regard to its socioeconomic or racial status. TCEQ does not allow discrimination on the basis of race, color, national origin, sex, disability, age, sexual orientation, veteran status, or retaliation in the administration of our programs or activities, as required by federal and state laws and regulations. TCEQ strives to ensure that all Texans can participate in TCEQ programs. The Office of the Chief Clerk works to help citizens and neighborhood groups participate in the regulatory process to ensure that agency programs that may affect human health or the environment operate without discrimination and to make sure that citizens' concerns are considered thoroughly and are handled in a way that is fair to all.

TCEQ is making a strong policy commitment to enhance public participation and language access for all Texans. These efforts include:

Proposal, adoption, and implementation of a rulemaking on alternative language public notice requirements and public participation;

Development of a Disability Nondiscrimination Plan, Public Participation Plan, and Language Access Plan;

Holding stakeholder meetings to discuss public participation, as well as the Disability Nondiscrimination, Public Participation, and Language Access Plans. You can see each of those plans on this page;

Updating employee training to ensure federal nondiscrimination laws, policies, and procedures are included; and

Considering, within our jurisdiction, ways to enhance participation, language access, and environmental quality in areas that may be disproportionately impacted.

For more information on Environmental Justice, individuals may visit TCEQ's webpage, Title VI Compliance at TCEQ at <https://www.tceq.texas.gov/agency/decisions/participation/title-vi-compliance>. Also, individuals may direct environmental justice concerns to TCEQ staff at the following addresses and contact numbers:

Mail:

Jim Fernandez, Nondiscrimination Coordinator
Environmental Justice (MC-105)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Email: chiefclk@tceq.texas.gov
Phone: 512-239-2566
Fax: 512-239-3311

CHANGES MADE TO THE PERMIT IN RESPONSE TO COMMENT

No changes to the proposed permit were made in response to comments.

Respectfully submitted,

TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY

Erin E. Chancellor, Interim Executive Director

Guy Henry, Acting Deputy Director
Environmental Law Division



By: _____

Anthony Tatu
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Environmental Law Division
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