

TCEQ DOCKET NO. 2025-0080-IWD

APPLICATION BY
DOW HYDROCARBONS &
RESOURCES, LLC AND UNION
CARBIDE CORP. FOR TPDES
PERMIT NO. WQ0000447000

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BEFORE
THE TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission/TCEQ) files this Response to Requests for a Contested Case Hearing (hearing requests) filed on the application by Dow Hydrocarbons & Resources, LLC and Union Carbide Corporation (Applicant) for a Major Amendment without Renewal to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0000447000, otherwise known as the “draft permit,” which authorizes certain discharges at the Applicant’s industrial facility that are detailed below. The TCEQ’s Office of the Chief Clerk (OCC) received hearing requests from Mr. John Daniel and from San Antonio Bay Estuarine Waterkeeper (SABEW), which also filed a Request for Reconsideration (RFR).

II. ATTACHMENTS FOR COMMISSION CONSIDERATION

- Attachment A - ED's GIS Map and its Appendix

III. DOCUMENT MAP

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IV. BACKGROUND

A. Description of the Existing Facility, Authorization, & Discharge Route

The Applicant operates a chemical manufacturing facility (EPA I.D. No. TX0002844), producing glycol, oxide derivatives, and polyethylene and polypropylene plastics located at 7501 State Highway 185 North, near the City of Seadrift in Calhoun County, Texas 77983, called Seadrift Operations (Seadrift facility).

The existing permit authorizes discharges of effluent, known as process wastewater from the Seadrift facility, remediated groundwater, domestic wastewater, utility wastewater, hydrostatic test water, and stormwater at a daily average dry-weather flow limitation or “limit” not to exceed 5.8 million gallons per day (MGD) via Outfall No. 1.

Via Outfall No.2, the authorized discharge at a daily average dry-weather flow not to exceed 12 MGD contains stormwater from the Seadrift facility, cooling water blowdown, water treatment waste, boiler blowdown, resin pad wash water, resin container rinse water, steam condensate, hydrostatic test water, firewater, and *de minimis* quantities of process wastewater.

Via Outfalls Nos. 3, 4, 5, 6, 12, 14, 15, & 16, the authorized discharge is stormwater on an intermittent and flow-variable basis. The Seadrift facility also receives and treats wastewater from the Braskem facility, a third-party, on-site facility, which discharges wastewater to the Wastewater Transfer Ditch that the Seadrift facility utilizes because the Braskem facility manufactures polypropylene, just as the Applicant, and its wastewaters are compatible with the Seadrift facility's wastewater treatment system.

The discharge route for Outfall Nos. 1, 2, 5, 6, 7, 8, 9, 10, and 12 is directly to Victoria Barge Canal Tidal in Segment No. 1701 of the Lavaca-Guadalupe Coastal Basin. For Outfall No. 3, the discharge first enters a ditch, then, just as for Outfall Nos. 14 and 15, the discharge route is to West Coloma Creek, then to Coloma Creek. For Outfall No. 16, the discharge route is to West Coloma Creek Lateral No. 17, to West Coloma Creek, to Coloma Creek, then to Matagorda Bay/Powderhorn Lake in Segment No. 2451 of the Bays and Estuaries. For No. Outfall 4, the discharge route is to an unnamed ditch, then to San Antonio, Hynes, and Guadalupe Bays/Mission Lake in Segment No. 2462 of the Bays & Estuaries.

B. Application Requests Granted

The Major Amendment without Renewal application does not alter any of the discharge routes listed above but does seek to authorize the discharge of stormwater on an intermittent and flow-variable basis via Outfalls Nos. 3, 4, 5, 6, 12, 14, 15 & 16. Via Outfall No.1, the application seeks to authorize the discharge of process wastewater from the Seadrift facility, remediated groundwater, domestic wastewater, utility wastewater, hydrostatic test water, and stormwater at a daily average dry-weather flow limit not to exceed 5.8 million gallons per day (MGD). During Interim Phase I and via Outfall No. 002, another authorization is sought for a discharge of cooling water blowdown, water treatment wastes, boiler blowdown, resin pad wash water, resin container rinse water, steam condensate, stormwater from the Seadrift facility, hydrostatic test water, firewater, and *de minimis* quantities of process wastewater at a daily average dry-weather flow not to exceed 12 MGD. Also via Outfall No. 2 and during the Final phase, an authorization is sought for a discharge consisting of cooling water blowdown, water treatment waste, boiler blowdown, resin pad wash water, resin container rinse water, steam condensate, stormwater from the Seadrift facility, hydrostatic test water, firewater, and *de minimis* quantities of process wastewater at a daily average flow not to exceed 17 MGD.

C. Application Requests Not Granted

The ED did not grant the application requests to:

- add and identify flow as “total flow” at Outfall No. 1;
- add monitoring and reporting requirements for the daily average and daily maximum for “total flow” at Outfall No. 1;
- apply mass loading and concentration limits for biochemical oxygen demand, 5-day (BOD₅) and Total Suspended Solids (TSS) to the “total flow” at Outfall No. 1;

- revise Other Requirement No. 1 for consistency with requested changes for flow, BOD₅, and TSS at Outfall No. 1; and
- move the compliance point for floating solids, visible foam and visible oil for Outfall Nos. 1, 2, 6, and 12.

D. Administrative Procedure for TPDES Applications

The TPDES permitting process (TPDES process) for the review and approval of TPDES applications is found in the draft permit's Fact Sheet and the ED's Preliminary and Final Decision letters that are mailed by the TCEQ's Office of the Chief Clerk (OCC). The TPDES process finds its roots in Administrative Law, which includes laws and legal principles for the transparent administration of both federal and state governmental; regulatory agencies consistent with the principle of "public participation in government." For purposes of creating a record of the decision-making involved in a TPDES application, the TPDES process requires essential notices of an application be provided to the public from the start of the process, the application's submittal, through its completion, when the TCEQ issues a Final Decision and Order on the application, all of which is documented through what is otherwise known as an application's "Administrative Record." An Administrative Record can be thought of as the documentation for a series of procedurally relevant events for a TPDES application.

The first notice provided to the public, referred to as the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI), occurs after the application is submitted to the TCEQ and the ED, after review, declares it "administratively complete." The TPDES process requires the NORI to be published in the newspaper of largest circulation in the county where the subject facility is located. The OCC also mails the NORI to any interested persons and, if required, to adjacent landowners identified in the application. The NORI is meant to inform the public about the application and provide notice that interested persons may file comments on the application or request a contested case hearing or a public meeting for up to thirty (30) days after publication of the NAPD or CO-NORI-NAPD (end of the comment period). The TPDES process also requires applicants to place a copy of the application in a public place in the county where the subject facility is located for viewing and copying throughout the comment period.

The second notice provided to the public, referred to as the Notice of Application and Preliminary Decision (NAPD), is mailed to the individuals identified on the OCC's mailing list and published in the same newspaper as the NORI after the ED completes her Technical Review (Tech Review) and prepares a draft permit. If, during the ED's Tech review, there are changes to an application, or errors are discovered after the NORI was published, the TCEQ rules allow applicants to publish a Combined NORI-NAPD (CO-NORI-NAPD) to correct any errors or to acknowledge changes to the application or deliver other important details about the application to the public.

The NAPD also sets a date for the close of the comment period ((30) days after publication of the NAPD or CO-NORI-NAPD), and after the public comment period closes, the ED, as required by the TCEQ's Administrative Process and its rules, found in Title 30 of the Texas Administrative Code (30 TAC), section (§) 55.156 and before a permit is issued, prepares a response (RTC) to all timely, relevant, and material, or significant comments, whether withdrawn, that addresses the comments received.

The OCC then mails the ED's RTC and Final Decision letter to individuals who have filed comments, requested a contested case hearing, or requested to be on the mailing

list. The notice included with the ED's RTC and Final Decision letter provides that a person may request a contested case hearing or file a request for reconsideration (RFR) of the ED's decision within thirty (30) days after the ED's RTC and Final Decision letter are mailed. The ED will issue the permit unless a written hearing request or request for reconsideration (RFR) is filed within thirty (30) days after the ED's RTC and Final Decision letter are mailed, the ED will not issue the permit and will forward the application and request to the TCEQ's Commissioners for their consideration at a scheduled open meeting of the Commission, called an "Agenda."

E. Procedural History of the application

The application has been available for viewing and copying at the Calhoun County Public Library, 200 West Mahan Street, Port Lavaca, Texas, since publication of the NORI. The final permit application, draft permit, Fact Sheet/Technical Summary and the ED's preliminary and final decision letters have been available for viewing and copying at the same location since publication of the first CO-NORI-NAPD.

For this application the required notices were published in Calhoun County, Texas in English in *the Port Lavaca Wave* and in Spanish in *Revista de Victoria*, and the application's relevant Administrative Procedural history is below. The application was:

- Submitted and received on 12-27-2022.
- Declared Administratively Complete on 03-21-2023.
- Publicized by NORI in English on 03-29-2023/ Spanish on 04-05-2023.
- Publicized by CO-NORI-NAPD in English on 04-10-2024/ Spanish on 03-28-2024.
- Declared Technically Complete and the draft permit prepared on 11-14-23.
- Publicized by CO-NORI-NAPD in English on 06-26-2024/ Spanish on 06-28-2024.
- The public comment period ended on 07-29-24.
- The ED's RTC was filed with CCO on 11-12-24.
- The ED's RTC and Final Decision letter were mailed on 11-19-24.
- The RFR/ hearing request period ended on 12-19-24.
- The Agenda setting letter was mailed on 01-31-25.
- The Agenda is scheduled for 03-13-25.

Because the application was received after September 1, 2015, and declared administratively complete after September 1, 1999, it is subject to both the procedural requirements adopted pursuant to House Bill 801 (HB-801), 76th Legislature, 1999, and the TCEQ rules in 30 TAC Chapters 39, 50, and 55, which implement the procedural requirements of Senate Bill 709 (SB-709), 84th Legislature, 2015.

V. ACCESS TO INFORMATION, LAWS, RULES & TCEQ RECORDS, REQUIRED NOTICES PUBLISHED IN SPANISH & ENGLISH, AND COMPLAINTS

For information about this permit application or the environmental permitting process, please contact the TCEQ's Public Education Program at (800) 687-4040.

➤ www.tceq.texas.gov/agency/decisions/participation/permitting-participation

Alternative language notice in Spanish is available at; El aviso de idioma alternativo en español está disponible en:

- <https://www.tceq.texas.gov/permitting/wastewater/pending-permits/application-details#Document-Summary>.

Commission records for the proposed facility are available for viewing and copying at TCEQ's main office in Austin at 12100 Park 35 Circle, Building F, 1st Floor in the OCC, for the current application until final action is taken). Some documents at the OCC may also be found in the TCEQ Commissioners' Integrated Database.

- www.tceq.texas.gov/goto/cid

If individuals wish to file a complaint about the Seadrift facility concerning its compliance with the provisions of its permit or with TCEQ rules, the TCEQ's Office of Compliance and Enforcement (OCE) should be contacted. Specifically, the TCEQ's Regional Office (Region 14) in Corpus Christi, Texas may be contacted at (361) 881-6900 or the statewide toll-free number at 1-888-777-3186 to address potential permit violations. In addition, complaints may be filed electronically through the link to the TCEQ's compliance website below or by sending an email to the "complaint" email address below. If an inspection by the TCEQ finds that the Applicant is not complying with all requirements of the proposed permit, or that the proposed facility is out of compliance with TCEQ rules, enforcement actions may arise.

- <https://www.tceq.texas.gov/compliance/complaints>
- complaint@TCEQ.Texas.gov

VI. APPLICABLE LAW FOR EVALUATION OF HEARING REQUESTS

HB-801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests (Requests). The Commission implemented HB 801 by adopting procedural rules in 30 TAC chapters 39, 50, and 55. SB-709 revised the requirements for submitting public comment and the commission's consideration of hearing requests. This application was declared administratively complete on March 21, 2023; therefore, it is subject to the procedural requirements adopted pursuant to both HB-801 and SB-709. Because all hearing requests filed on this application were from an individual and a group or association, there are two different analyses, each with their own set of rules for the ED to employ when analyzing the hearing requests.

A. Legal Authority to Respond to Hearing Requests

The ED may submit written responses to hearing requests. Responses to hearing requests must specifically address:

1. whether the requestor is an affected person;
2. whether issues raised in the hearing request are disputed;
3. whether the dispute involves questions of fact or law;
4. whether the issues were raised during the public comment period;
5. whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter by filing a written withdrawal letter with the chief clerk prior to the filing of the ED's Response to Comment;
6. whether the issues are relevant or material to the decision on the application; and
7. a maximum expected duration for the contested case hearing.

B. Hearing Request Requirements

To consider a hearing request, the Commission must first conclude that the requirements in 30 TAC §§ 55.201 and 55.203 are met as follows.

A hearing request by an affected person must be in writing, filed with the chief clerk within the time provided . . . , based only on the requester's timely comments, and not based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the ED's RTC.

A hearing request must substantially comply with the following:

- (1) give the name, address, telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who is responsible for receiving all official communications and documents for the group;
- (2) identify the person's justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) for applications filed;
- (B) on or after September 1, 2015, list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.

C. Requirement that Requestor be an Affected Person

To grant a hearing request, the commission must determine, pursuant to 30 TAC § 55.203, that a requestor is an affected person.

- (a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the public does not qualify as a personal justiciable interest.
- (b) Governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
 - (2) distance restrictions or other limitations imposed by law on the affected interest;
 - (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
 - (6) whether the requester timely submitted comments on the application which were not withdrawn; and
 - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- (d) In making this determination, the commission may also consider, to the extent consistent with case law:
- (1) the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;
 - (2) the analysis and opinions of the ED; and
 - (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.

D. Requests by Groups or Associations

To grant a hearing request from a group or association, the commission must determine that a group or association is affected pursuant to 30 TAC § 55.205(b).

- (b) For applications filed on or after September 1, 2015, a request by a group or association for a contested case may be granted if all the following are met.
- (1) comments on the application are timely submitted by the group or association;
 - (2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
 - (3) the interests the group or association seeks to protect are germane to the organization's purpose; and
 - (4) neither the claim asserted, nor the relief requested requires the participation of the individual members in the case.

E. Referral to the State Office of Administrative Hearings

“When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to State Office of Administrative Hearing (SOAH) for a hearing.” “The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

- (1) involves a disputed question of fact or a mixed question of law and fact,
- (2) was raised during the public comment period by an affected person; and
- (3) is relevant and material to the decision on the application.”

VII. EVALUATION OF THE HEARING REQUESTS

For this application the period for the public to file comments on the application ended on July 29, 2024, and the period for filing a hearing request or an RFR ended on December 19, 2024. The ED’s analyses below determined whether the hearing requests conformed with TCEQ rules, if the requestor qualified as an affected person, if the group or association met all applicable requirements for affectedness or “associational standing,” the issues to be referred for a hearing, and the length of that hearing.

A. Whether the hearing requests of John Daniel complied with the requirements of 30 TAC §§ 55.201(c) & (d).

Mr. Daniel filed two timely, written hearing requests that provided the requisite contact information, supplied two addresses for the ED to map, raised relevant and material issues that form the basis of his hearing requests in timely comments not withdrawn before the ED’s RTC was filed, and requested a hearing.

Mr. Daniel’s hearing requests complied with the requirements of 30 TAC § 55.201(c), as Mr. Daniel’s hearing requests stated he lives in proximity to the Seadrift facility and raised issues that he states may inflict harm on him and his surroundings. Mr. Daniel raised concerns about the effects the Seadrift facility would have on his farm and the food it produces, adverse effects on wildlife, as well as impacts to water quality that could affect his water wells. However, the addresses supplied by Mr. Daniel are not in proximity to any relevant features from the application, meaning his hearing requests did not comply with 30 TAC § 55.201(d) as they failed to identify a personal justiciable interest affected by the application.

The ED recommends finding that the hearing requests from John Daniel did not substantially comply with both 30 TAC §§ 55.201(c) and (d).

B. Whether John Daniel is Affected Person under 30 TAC § 55.203.

According to the GIS map prepared by the ED’s staff, the two addresses supplied by Mr. Daniel’s hearing requests are 3.07 and 3.2 miles from Outfall No. 16, the closest feature from the application. These distances are too far to be relevant for establishing a personal justiciable interest, as the likelihood that Mr. Daniel will be adversely affected by the proposed facility in a manner not common to members of the public is decreased by the distances. More specifically, the distances prevent Mr. Daniel’s hearing requests from articulating a personal justiciable interest affected by the application, as the distances highlight that his hearing requests fail to demonstrate a reasonable relationship exists between the interests claimed and the activity regulated. Stated another way, the causal link between the application and Mr. Daniel’s claimed interests are too attenuated because of Mr. Daniel’s distance from Outfall No. 16, which also decreases the likelihood that Mr. Daniel will be negatively impacted in a unique way. Therefore, Mr. Daniel is not an affected person under 30 TAC § 55.203.

The ED recommends finding that the Commission find that John Daniel is not an Affected Person under 30 TAC § 55.203.

C. Whether SABEW complied with the conditions of 30 TAC §§ 55.205(b)(1) and (3) in relation to its hearing requests.

The two basic or preliminary conditions for associational standing, found at §§ 55.205(b)(1) and (3), require that SABEW must have filed timely comments on the application, and the interests that SABEW seek to protect are germane to its purpose.

On May 10, 2024, and during the comment period, SABEW filed comments and a hearing request in the same document. This fact and the information below, from SABEW's hearing requests, highlights that SABEW made timely comments on the application in compliance with 30 TAC § 55.205(b)(1).

SABEW, a non-profit organization and a member of Waterkeeper Alliance, a global movement of more than 350 Waterkeeper Organizations and Affiliates, focusing citizen action on issues like pollution possibly impacting waterways, filed numerous hearing requests and attachments during the comment period, containing comments on the application related to protecting water quality and preventing pollution.

Further, SABEW defines its mission as promoting the preservation of local wetlands and waterways for commercial and sport fishing and other recreational uses, proactively protecting Lavaca, Matagorda and San Antonio Bays by identify violations of the Clean Water Act and promoting cleanup and recovery efforts for the regional waterways and bays. The information above, from SABEW's hearing requests, details that SABEW made comments on the application that relate to the interests it seeks to protect, and which are germane to its purpose according to 30 TAC § 55.205(b)(3).

The ED recommends finding that the hearing requests of SABEW substantially complied with both 30 TAC §§ 55.205(1) and (3).

D. Whether SABEW complied with the conditions of 30 TAC §§ 55.205(b)(2) and (4) in relation to its hearing requests.

The two most central conditions for associational standing, found at §§ 55.205(b)(2) and (4), require SABEW to identify one member of the group or association that would otherwise have standing to request a hearing in their own right, and that neither the claim asserted, nor the relief requested requires the participation of the member at the contested case hearing.

SABEW identified three of its members for associational standing purposes; however, only one member must meet the requirements for associational standing for the group or association to be granted standing. Therefore, for brevity, the ED is providing only the analysis of the member, Mr. Curtis Miller, who complies with the requirements for associational standing. The ED first analyzes Mr. Miller's affectedness as if Mr. Miller had submitted the hearing request himself.

(1) Whether the hearing request of Curtis Miller complied with the requirements of 30 TAC §§ 55.201(c) & (d).

Mr. Miller filed a timely, written hearing request that provided the requisite contact information, supplied an address for the ED to map, raised relevant and material issues that form the basis of his hearing request in timely comments not withdrawn before the ED's RTC was filed, and requested a hearing.

Mr. Miller's hearing request complied with 30 TAC §§ 55.201(c), and (d) because it effectively identified a personal justiciable interest in a written explanation plainly describing why Mr. Miller believes he will be affected by the application differently

than the public. Mr. Miller stated in his hearing request that he is a commercial fisherman and has owned his seafood business (Miller's Seafood) since the mid-1960s, he owns five commercial fishing boats that dock and unload at Miller's Seafood's Seadrift location, and he has recently expanded his business to include a fresh seafood market in Port Lavaca. Mr. Miller's hearing request detailed that he has expanded from its Seadrift location to include a fresh seafood market in Port Lavaca but is concerned about plastic discharges from the Seadrift facility, toxins in oysters and shrimp, and water quality in general, as there has been a decline in oyster and shrimp populations in the San Antonio and Matagorda Bays. Mr. Miller worries that the increased discharges of plastic from the Seadrift facility will hurt the populations of fish, shrimp, and oysters that he provides and sells at both of Miller's Seafood locations. Mr. Miller's hearing request claims that plastics and other harmful pollutants may be discharged by the Seadrift facility into the waters he fishes for his business, which is an issue relevant and material to a decision on the application, and are issues addressed by the law under which the application is being considered.

The ED recommends finding that Curtis Miller's hearing request substantially complied with 30 TAC §§ 55.201(c) and 55.201(d).

(2) Whether Curtis Miller is an Affected Person under 30 TAC § 55.203.

Mr. Miller's hearing request raised relevant and material fact issues because of proximity to where the discharge route for the Seadrift facility's Outfall Nos. 1, 2, 4, 5, 6, 7, 8, 9, 10, and 12 enter San Antonio, Hynes, and Guadalupe Bays/Mission Lake in Segment No. 2462 of the Bays & Estuaries, which are designated as Oyster Waters by the Texas Surface Water Quality Standards. The GIS map prepared by the ED's staff locates Mr. Miller's Seadrift location of Miller's Seafood Co. 2.1 miles from where the Seadrift Facility's discharge route enters the bays referenced above. Given the volume of discharge from the outfalls utilizing the single discharge route, and the designated Oyster Waters where Mr. Miller obtains his products to sell through his business, the issue Mr. Miller raised related to increased discharges of plastic from the Seadrift facility negatively impacting the populations of fish, shrimp, and oysters where he fishes, is an issue addressed in the draft permit and is an economic interest unique to him because of the proximity his business is to where the discharge route enters the bays. This highlights that a reasonable relationship exists between the interests claimed and the activity regulated and increases the likelihood that Mr. Miller will be affected in a way not common to the public.

The ED recommends that the Commission find that Curtis Miller is an Affected Person under 30 TAC § 55.203.

The ED, having determined that a member that SABEW identified in its hearing requests would otherwise have standing to request a hearing in his own right, finds that SABEW complied with the conditions of 30 TAC § 55.205(b)(2).

Regarding the conditions of 30 TAC § 55.205(b)(4), SABEW's hearing requests allude to the fact that it often works with commercial fishermen, shrimpers and oystermen who fish in the bays referenced above to preserve and protect the bays by identifying violations of the Clean Water Act. In addition, neither the claim asserted, nor the relief requested requires the participation of Mr. Miller at the contested case hearing, and the ED finds that SABEW complied with the conditions of 30 TAC § 55.205(b)(4).

The ED recommends that the Commission find that SABEW met all the conditions for Associational Standing and is entitled to have its hearing requests granted pursuant to 30 TAC § 55.205(b).

VIII. ISSUES RAISED IN REFERABLE HEARING REQUESTS:

The following issues were raised in SABEW's comments that were included in the hearing requests that were filed on the application during the comment period and therefore, can be said to have been timely comments on the application.

1. Whether the information from the application justifies the increased volumes of discharges in the draft permit.

This is a fact issue, and if it's proven that this issue is factually accurate or relevant, this issue would be significant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

2. Whether the Applicant's compliance history indicates that the Applicant is unable to comply with the terms of the draft permit.

This is a fact issue, and if it's proven that this issue is factually accurate or relevant, this issue would be significant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

3. Whether plastics discharged by the Seadrift facility will cause a violation of the Texas Surface Water Quality Standards and will negatively impact water quality, human health, and the environment.

This is a fact issue, and if it's proven that this issue is factually accurate or relevant, this issue would be significant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

4. Whether the application is incomplete and whether that incompleteness renders the draft permit deficient.

This is a fact issue, and if it's proven that this issue is factually accurate or relevant, this issue would be significant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

5. Whether the draft permit contains adequate provisions to limit the discharge of plastics in according to the TSWQS found in 30 TAC Ch. 307 of the TCEQ's rules.

This is a fact issue, and if it's proven that this issue is factually accurate or relevant, this issue would be significant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

6. Whether the draft permit contains adequate provisions to protect the receiving waters according to the TSWQS, found in 30 TAC Ch. 307 of the TCEQ's rules.

This is a fact issue, and if it's proven that this issue is factually accurate or relevant, this issue would be significant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

7. Whether the draft permit has adequate provisions to protect impaired waters.

This is a fact issue, and if it's proven that this issue is factually accurate or relevant, this issue would be significant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

8. Whether the draft permit's analytical and detection limits and testing methods comply with applicable rules and regulations.

This is a fact issue, and if it's proven that this issue is factually accurate or relevant, this issue would be significant and material to a decision on the application.

The ED concludes this issue is relevant and material, and if this case is referred to SOAH, the ED recommends the Commission refer this issue.

IX. CONTESTED CASE HEARING DURATION

If the Commission grants a hearing on this application, the ED recommends that the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.

X. REQUESTS FOR RECONSIDERATION

SABEW filed a timely Request for Reconsideration (RFR). TCEQ's rules provide that an RFR must expressly state that the person is requesting reconsideration of the executive director's decision and provide reasons why the decision should be reconsidered. 30 TAC § 55.201(e).

After reviewing the Request for Reconsideration, the Executive Director did not see any cause for changing the draft permit. The issues raised in the Request for Reconsideration, to the extent they are relevant and material to the application, were addressed in the RTC and considered by the Executive Director. The Executive Director recommends the Commission deny the Request for Reconsideration.

XI. EXECUTIVE DIRECTOR'S RECOMMENDATION

The ED recommends the following actions by the Commission:

1. Find that John Daniel is not an affected person under 30 TAC § 55.203 and deny his hearing requests.
2. Find that San Antonio Bay Estuarine Waterkeeper met the conditions for Associational Standing in 30 TAC § 55.205(b) and grant its hearing requests.
3. Deny the Requests for Reconsideration (RFR) filed by SABEW because the RFR failed to raise any new information for the ED or the Commission to consider.

4. Should the Commission decide to refer this case to SOAH:
- a. refer the case to Alternative Dispute Resolution for a reasonable time; and
 - b. refer the identified issues above in section VIII. 1.- 8. to the State Office of Administrative Hearings (SOAH) for a contested case hearing lasting no more than 180 days from the preliminary hearing to the presentation to the Commission of a Proposal for Decision issued by SOAH.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Executive Director

Phillip Ledbetter, *Director*
Office of Legal Services

Charmaine Backens, *Deputy Director*,
Environmental Law Division



Michael T. Parr II, Staff Attorney
Environmental Law Division
State Bar No. 24062936
P.O. Box 13087, MC 173
Austin, Texas 78711 3087
Telephone No. 512-239 0611
Facsimile No. 512-239-0626

REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

XII. CERTIFICATE OF SERVICE

I certify that on February 14, 2025, the Executive Director's Response to Hearing Requests for TPDES Permit No. WQ0000447000 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

A handwritten signature in black ink, appearing to read "Michael T. Parr II". The signature is fluid and cursive, with a large initial "M" and a distinct "II" at the end.

Michael T. Parr II, *Staff Attorney*
State Bar No. 24062936

MAILING LIST

Dow Hydrocarbons and Resources LLC and Union Carbide Corporation
TCEQ Docket No./TCEQ Expediente N.º 2025-0080-IWD
TPDES Permit No./TPDES Premise N.º WQ0000447000

FOR THE APPLICANT/PARA EL SOLICITANTE

Miguel Salazar, Environmental Specialist
Dow Hydrocarbons and Resources LLC
and/y Union Carbide Corporation
P.O. Box 186
Port Lavaca, Texas 77979

REQUESTER(S)/SOLICITANTE(S)

San Antonio Bay Estuarine Waterkeeper
845 Texas St Suite 200
Houston TX 77002-2858

Daniel, John
1714 FM 2235
Port Lavaca TX 77979-5937

FOR THE EXECUTIVE DIRECTOR/PARA EL DIRECTOR EJECUTIVO

via electronic mail/vía correo electrónico:

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

Monica Valin-Baez, Technical Staff
Texas Commission on
Environmental Quality
Water Quality Division, MC-148
P.O. Box 13087
Austin, Texas 78711

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

FOR PUBLIC INTEREST COUNSEL/ PARA ABOGADOS DE INTERÉS PÚBLICO

via electronic mail/vía correo electrónico:

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

FOR ALTERNATIVE DISPUTE RESOLUTION/PARA LA RESOLUCIÓN ALTERNATIVA DE DISPUTAS

via electronic mail/vía correo electrónico:

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

FOR THE CHIEF CLERK/PARA EL SECRETARIO OFICIAL

via eFilings:

Docket Clerk
Texas Commission on
Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711
<https://www.tceq.texas.gov/goto/efiling>

Attachment A

Dow - Union Carbide Corp. GIS Map

WQ0000447000

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



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 1/21/2025
CRF 0116825
Cartographer: JStalsby



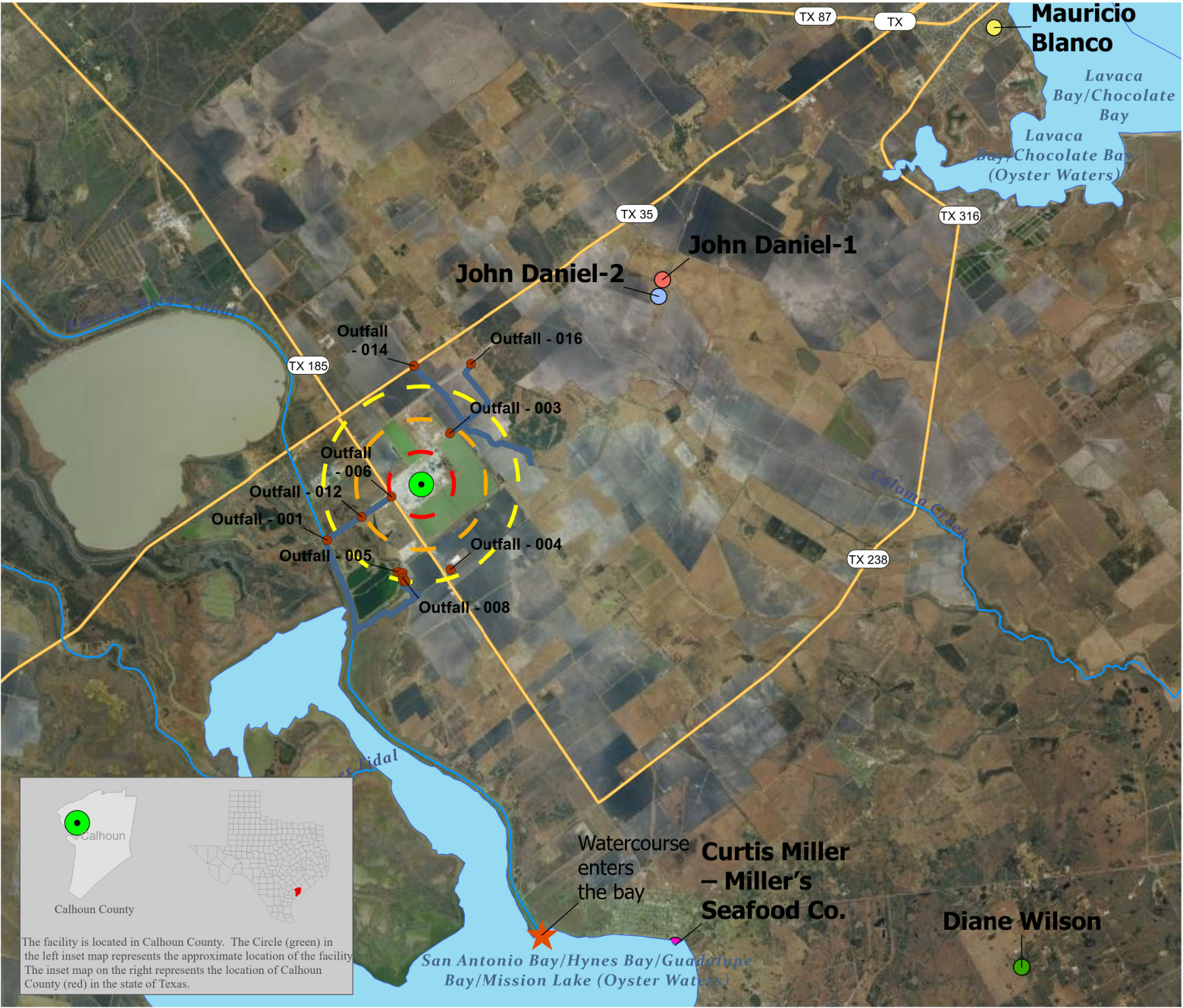
- Facility
- Wastewater Outfalls
- Discharge Route
- 0.5 Mile Radius
- 1 Mile Radius
- 1.5 Mile Radius

Requestor Name	Nearest Feature	Distance
Diane Wilson	Outfall 004	10.7 miles
Mauricio Blanco	Outfall 016	9.6 miles
Curtis Miller – Miller's Seafood Co.	discharge route	2.1 miles
John Daniel-1	Outfall 016	3.2 miles
John Daniel-2	Outfall 016	3.07 miles

0 1.5 3 Miles

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



The facility is located in Calhoun County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Calhoun County (red) in the state of Texas.