

**TCEQ DOCKET NO. 2025-0114-IWD**

<b>APPLICATION BY THE CITY</b>	<b>§</b>	<b>BEFORE THE</b>
	<b>§</b>	
<b>OF CORPUS CHRISTI FOR</b>	<b>§</b>	<b>TEXAS COMMISSION</b>
	<b>§</b>	
<b>TPDES PERMIT NO.</b>	<b>§</b>	<b>ON</b>
	<b>§</b>	
<b>WQ0005289000</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**APPLICANT’S RESPONSES TO CONTESTED CASE HEARING  
REQUESTS AND REQUESTS FOR RECONSIDERATION**

The City of Corpus Christi (the “*Applicant*”) files these responses to contested case hearing (“*CCH*”) requests and requests for reconsideration (“*RFR*”) and, in support of its responses, would respectfully show the TCEQ Commissioners as follows:

**BACKGROUND**

The City of Corpus Christi applied to TCEQ on January 22, 2020, for new TPDES Permit No. WQ0005289000 (the “*Application*”). The new permit would authorize the Applicant to discharge seawater desalination treatment residuals at a daily average flow not to exceed 34.4 million gallons per day (“*MGD*”) in the initial phase and 51.5 MGD in the final phase. The proposed treatment facility will be located at the intersection of Nueces Bay Boulevard and West Broadway Street, in Corpus Christi, Nueces County, Texas 78401 (the “*Facility Property*”). Discharges will be made directly into the Inner Harbor Ship Channel (Segment 2484) (the “*Ship Channel*”) from an outfall

located near the Facility Property (“*Outfall 001*”). The designated uses for the Ship Channel are non-contact recreation and intermediate aquatic life use. Public use of the Ship Channel for recreation is restricted. 33 C.F.R. § 165.809.

The Application was extensively reviewed by TCEQ staff. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit was issued on June 6, 2020 (the “*NORI*”). Formal technical review of the Application concluded with the Executive Director’s release of the agency’s Notice of Application and Preliminary Decision for TPDES Permit for Industrial Wastewater on March 6, 2024 (the “*NAPD*”). At the same time, the Executive Director issued a draft TPDES Permit No. WQ0005289000 (the “*March 2024 Draft Permit*”).

Review and scrutiny of the Application did not end with issuance of the March 2024 Draft Permit, however. A public meeting was held in Corpus Christi on April 18, 2024. Numerous individuals and organizational representatives submitted public comments, in addition to many written comments already submitted previously. Technical review took another step following the April 2024 public meeting. EPA Region 6 also requested a copy of the Application materials following its own consideration of the public comments submitted to TCEQ. The Executive Director provided the EPA with a courtesy copy of the NAPD, the Executive Director’s Technical Summary of the Application, the March 2024 Draft Permit, and the Applicant’s Compliance

History.<sup>1</sup> Region 6 then conducted its own independent review of the requests in the Application, including the March 2024 Draft Permit. During EPA’s review, agency representatives held multiple discussions regarding the March 2024 Draft Permit and potential revisions. On October 11, 2024, Region 6 staff informed TCEQ that the EPA would not object to the issuance of a draft permit that addressed questions raised by the EPA during its review.<sup>2</sup>

Executive Director staff considered the numerous public comments and EPA feedback. It was after review and consideration that, on December 19, 2024, staff released the Executive Director’s Response to Public Comment (the “*RTC*”), the Statement of Basis/Technical Summary and Executive Director’s Preliminary Decision (the “*Statement of Basis*”), the Final Decision letter, and a revised draft TPDES Permit No. WQ0005289000. The December 2024 draft permit included more restrictions and requirements than the initial version as described in detail in the Statement of Basis (the “*Draft Permit*”). The

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<sup>1</sup> Attachment A - May 6, 2024 email exchange between Matthew Udenenwu, Manager, Wastewater Permitting Section, Water Quality Division, Texas Commission on Environmental Quality, and Kilty Baskin, State Coordinator, NPDES Review Section (WD-PN), EPA Region 6.

<sup>2</sup> Attachment B – October 11, 2024 Correspondence from Curry Jones, Branch Manager, Permitting & Water Quality Branch, EPA Region 6, to Matthew Udenenwu, Section Manager, Wastewater Permitting Section, Texas Commission on Environmental Quality.

Statement of Basis reflects the Executive Director staff's administrative and technical review of the Application.

### **CITY'S RESPONSES TO CCH REQUESTS**

The Commission may only grant a hearing request filed by an affected person. Tex. Water Code § 5.556(c). An “affected person” is a person who “has a justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing.” *Id.* at § 5.115. However, “[a]n interest common to members of the general public does not qualify as a personal justiciable interest.” *Id.*

The Executive Director's staff received requests for a contested case hearing from Jestine Knox, Jason Hale, Hillcrest Residents Association, Monna Lytle, Daniel Pena, and Errol Summerlin (the “*CCH requestors*”). Each of the CCH requestors describe interests common to members of the general public. None of the requestors, however, demonstrated that they possess the type of interests required by Section 5.115(a) of the Texas Water Code, and Title 30, Section 55.203(c) of the Texas Administrative Code. TCEQ rules and the Texas Water Code prevent the Commission from approving each contested case hearing request that follows:

**1. Jestine Knox**

1910 Stillman Ave.

Corpus Christi, Texas 78407-2342

All requests for a contested case hearing on the Application were due no later than January 21, 2025. Jestine Knox submitted a hearing request on January 22, 2025. Ms. Knox's request was untimely as consequence. TCEQ rules require that Jestine Knox's hearing request be denied.<sup>3</sup>

**2. Jason Hale**

R4421 Hamlin Dr  
Corpus Christi, Texas 78411-3059

Jason Hale submitted a request for a contested case hearing on January 21, 2025. Mr. Hale argues that he is an affected person because he is a wildlife photographer and birdwatcher who recreates in areas outside of the Ship Channel. Mr. Hale argues that the proposed discharge will reduce bird turnout and, as a result, interfere with his ability to photograph them.

Mr. Hale has not demonstrated any interest that is distinguishable from those held by members of the general public. Mr. Hale identified areas where he recreates ("the bayfront near the Art Museum of South Texas, the bayfront near the USS Lexington, Tule Lake, and Indian Point Pier"). None of these locations are within reasonable proximity of Outfall 001. Each of the areas are public venues, accessible to and visited by members of the general public, including tourists presumably from well beyond the Corpus Christi area. Mr. Hale has shown no personal, justiciable interests in any of these venues. His

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<sup>3</sup> 30 Tex. Admin. Code § 55.201(a).

birdwatching and photography hobbies are indistinguishable from interests shared in common with members of the general public.

Mr. Hale's concerns with potential impacts of the Draft Permit to Corpus Christi Bay and Nueces Bay do not rise to personal justiciable interests in the Application, including the Draft Permit. His request does not meet the requirements for affected person status. The Commission should deny Mr. Hale's hearing request on this basis.

**3. Hillcrest Residents Association<sup>4</sup>**

Earthjustice  
845 Texas Avenue, Suite 200  
Houston, Texas 77002  
900 Camp Street, Unit 303  
New Orleans, LA 70130

Perales, Almon & Ice, P.C.  
1206 San Antonio Street  
Austin, Texas 78701

The Hillcrest Residents Association ("*HRA*") submitted a hearing request and supplement by Erin Gaines, Marisa Perales, and Zora Djenohan as joint HRA representatives. HRA did not request a hearing based on the organization's personal justiciable interests. Instead, HRA requested a hearing based on associational standing.

The Commission may not grant an association's or organization's hearing request unless the organization identifies one or more members that

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<sup>4</sup> The HRA hearing request does not include an address for the organization.

have standing in their own right to request a hearing.<sup>5</sup> HRA's request attaches comments from April 18, 2024 that discusses the interests of nine individuals it describes as HRA members. At least one of the listed individuals must have standing to request a hearing in their own right in order for HRA to qualify as an affected person. As discussed below, none of the individuals that HRA has identified as its members have standing in their own right to request a contested case hearing.

- a. Madelyn ("Maddie") Chapman  
1617 Peabody Avenue  
Corpus Christi, Texas 78407

HRA describes Madelyn Chapman's as being concerned that construction and operational activity associated with the proposed facility will increase noise, traffic, and associated air pollution. The activity, HRA explains, will impact her neighborhood walks and gardening. HRA also contends that Ms. Chapman is concerned with how the proposed Ship Channel discharges will affect her recreational interests of bird watching.

In determining affected person status, the Commission may consider, among other things, whether the claimed interest is protected by law under which the application will be considered and whether a reasonable relationship

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<sup>5</sup> 30 Tex. Admin. Code § 55.205(a)(1).

exists between the claimed interest and the regulated activity.<sup>6</sup> Traffic and noise are not factors that are governed by the law under which the Application will be considered. Likewise, there is no reasonable relationship between traffic, noise, or air quality and the discharges into the Ship Channel made pursuant to the TPDES permit. Ms. Chapman's concerns, as described by HRA, are not justiciable interests entitling her to affected person status.

Similarly, Ms. Chapman does not live or recreate along or in the proposed location of Outfall 001.<sup>7</sup> There are no distance restrictions or other limits imposed by the TCEQ on the proposed discharges that affect Ms. Chapman's personal justiciable interests.<sup>8</sup>

To the extent Ms. Chapman enjoys watching birds and walking along Corpus Christi Bay, these are interests that are indistinguishable from interests shared in common by members of the general public. Walkways along Corpus Christi Bay are largely public venues, accessible to and visited by members of the general public like Ms. Chapman. Similarly, nothing appears to distinguish Ms. Chapman's birdwatching interests from the interests of members of the general public who also enjoy the activity.

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<sup>6</sup> 30 Tex. Admin. Code § 55.203(c)(1), (3).

<sup>7</sup> Outfall 001 is located on the Ship Channel, which is an industrial-use canal that is not open to public recreation. 33 C.F.R. § 165.809; Applicant's RFI Response Report at Appendix C Section 2.d.

<sup>8</sup> 30 Tex. Admin. Code § 55.203(c)(2).



Ms. Chapman's concerns with potential impacts of the Draft Permit to her described interests do not rise to level of personal justiciable interests required for the Commission to grant her request, if she had requested one. Her request does not meet the requirements for affected person status. If Ms. Chapman submitted a hearing request on her own accord based on the interests HRA describes, Texas Water Code Section 5.115 and 30 Texas Administrative Code Section 55.203(c) would require the Commission to deny the hearing request. Accordingly, Ms. Chapman would not have standing in her own right to request a hearing and her membership in HRA cannot be the basis for HRA's associational standing for its hearing request.

b. Norman Johnson  
1510 Palm Drive  
Corpus Christi, Texas 78407  
and  
3031 Summers Street  
Corpus Christi, Texas 78407

Norman Johnson did not submit comments on the Application. By this measure alone, he would not have standing in his own right to request a contested case hearing. On this basis, Mr. Johnson's membership in HRA cannot be the basis for HRA's associational standing for its contested case hearing request.<sup>9</sup>

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<sup>9</sup> See 30 Tex. Admin. Code § 55.203(c)(6).

In addition, the issues described by HRA on behalf of Mr. Johnson do not meet the requirements of Texas Water Code Section 5.115 and 30 Texas Administrative Code Section 55.203(c). HRA states that Mr. Johnson believes the construction and operation of the proposed treatment building will impact his use and enjoyment of his properties and it will negatively affect his property values. HRA also contends that Mr. Johnson owns property within and adjacent to the proposed facility boundary

In determining affected person status, the Commission may consider “whether a reasonable relationship exists between the interest claimed and the activity regulated[.]” 30 Tex. Admin. Code § 55.203(c)(3). HRA has not demonstrated a reasonable relationship between use and enjoyment of Mr. Johnson’s property (the interest claimed) and discharges into the Ship Channel (the activity regulated).

If Mr. Johnson submitted this as a hearing request on his own accord, Texas Water Code Section 5.115 and 30 Texas Administrative Code Section 55.203(c) would require the Commission to deny that request because it does not describe personal justiciable interests. Likewise, the Commission could not grant Mr. Johnson’s request, if he filed one, because he did not submit comments on the Application. Accordingly, Mr. Johnson would not have standing in his own right to request a contested case hearing. His membership

in HRA, therefore, cannot be the basis for HRA's associational standing for its hearing request.

c. Renior "LaMarcus" Knox, Sr.  
1910 Stillman Avenue  
Corpus Christi, Texas 78407

Renior Knox, Sr. did not submit comments on the Application. By this measure alone, he would not have standing in his own right to request a contested case hearing. On this basis, Mr. Knox's membership in HRA cannot be the basis for HRA's associational standing for its hearing request.<sup>10</sup>

The issues described by HRA on behalf of Mr. Knox do not meet the requirements of Texas Water Code Section 5.115 and 30 Texas Administrative Code Section 55.203(c). HRA states that Mr. Knox is "concerned with the transport of chemicals to, and sludge trucks from, the facility will inhibit his recreational activities . . . [and] high noise levels from the facility inhibiting his recreational activities and his enjoyment of his home and neighborhood." HRA also contends that Mr. Knox is concerned that the discharge will affect his interest as a recreational fisherman downstream from the Ship Channel.

In determining affected person status, the Commission may consider "whether the interest claimed is one protected by law under which the application will be considered;" and "whether a reasonable relationship exists

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<sup>10</sup> See 30 Tex. Admin. Code § 55.203(c)(6).

between the interest claimed and the activity regulated[.]” 30 Tex. Admin. Code § 55.203(c)(1) and (3). As the Executive Director stated in its RTC, the TCEQ’s regulatory authority does not include issues of increased traffic and noise. RTC at Response Nos. 14 and 33. Additionally, there is no reasonable relationship between increased traffic and discharges into the Ship Channel. As a result, Mr. Knox’s concern of increased traffic and noise affecting his recreational interest (walking his neighborhood) are not justiciable interests entitling him to affected person status.

Additionally, in determining affected person status, the Commission may consider “distance restrictions or other limitations imposed by law on the affected interest[.]” 30 Tex. Admin. Code § 55.203(c)(2). While Mr. Knox lives near the proposed location of the desalination plant, he does not live or recreate along the waterway of the Ship Channel or within a mile of Outfall 001. The Inner Harbor Desalination Plant is not like a wastewater treatment plant that has open treatment units with the potential for nuisance odors, so the location of the actual facility is of no concern.

To the extent that Mr. Knox’s recreational interests (fishing) are affected by the issuance of the Draft Permit, they are indistinguishable from interests held by the general public. All recreational interests listed by Mr. Knox take place beyond the mouth of the access-restricted Ship Channel in areas that are open to and enjoyable by members of the general public.

If Mr. Knox submitted this as a hearing request on his own accord, Texas Water Code Section 5.115 and 30 Texas Administrative Code Section 55.203(c) would require the Commission to deny that request because it does not describe personal justiciable interests. Likewise, the Commission could not grant Mr. Knox's request, if he filed one, because he did not submit comments on the Application. Accordingly, Mr. Knox would not have standing in his own right to request a contested case hearing. His membership in HRA, therefore, cannot be the basis for HRA's associational standing for its hearing request.

d. Monna L. Lytle<sup>11</sup>  
1422 Kennedy Avenue  
Corpus Christi, Texas 78407

The issues described by HRA on behalf of Ms. Lytle do not meet the requirements of Texas Water Code Section 5.115 and 30 Texas Administrative Code Section 55.203(c). HRA states that Ms. Lytle is "concerned how the increased traffic and noise in the neighborhood from construction and operation of the City's proposed facility will further impact her future use and enjoyment of her home and health."

To determine affected person status, the Commission may consider "whether the interest claimed is one protected by law under which the application will be considered;" and "whether a reasonable relationship exists

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<sup>11</sup> Monna Lytle also requested a contested case hearing on her own behalf. That request is addressed below.

between the interest claimed and the activity regulated[.]” 30 Tex. Admin. Code § 55.203(c)(1) and (3). As the Executive Director stated in its RTC, the TCEQ’s regulatory authority does not include issues of increased traffic and noise. RTC at Response No. 14 and 33. Additionally, there is no reasonable relationship between increased truck traffic or noise and discharges into the Ship Channel. As a result, Ms. Lytle’s concern about increased traffic and noise affecting her home and health are not justiciable interests entitling her to affected person status.

Additionally, in determining affected person status, the Commission may consider “distance restrictions or other limitations imposed by law on the affected interest[.]” 30 Tex. Admin. Code § 55.203(c)(2). While Ms. Lytle lives near the proposed location of the desalination plant, she does not live along the waterway of the Outfall 001 or within a mile of the outfall into the Ship Channel. HRA has not listed any impact on Ms. Lytle associated with the discharge from Outfall 001.

If Ms. Lytle submitted this as a hearing request on her own accord, Texas Water Code Section 5.115 and 30 Texas Administrative Code Section 55.203(c) would require the Commission to deny her request because it does not describe personal justiciable interests. Accordingly, Ms. Lytle does not have standing in her own right to request a contested case hearing. Her membership in HRA cannot be the basis for HRA’s associational standing for its hearing request.

e. Carrie Meyer  
4410 Gulfbreeze Boulevard  
Corpus Christi, Texas 78402

The issues described by HRA on behalf of Ms. Meyer do not meet the requirements of Texas Water Code Section 5.115 and 30 Texas Administrative Code Section 55.203(c). HRA states that Ms. Meyer and her family “recreate regularly . . . in close proximity to the Harbor Bridge . . . [where] her family regularly swim, kayak, kitesurf, and stand-up paddle board in the Corpus Christi Bay, near North Beach and the USS Lexington.” HRA also contends that Ms. Meyer will be economically affected because her kayak rental business “depend[s], in large part, on tourism in the area[.]” *Id.*

To determine affected person status, the Commission may consider “whether the interest claimed is one protected by law under which the application will be considered[.]” 30 Tex. Admin. Code § 55.203(c)(2). TCEQ’s regulatory authority does not include consideration of the impact on tourism. As a result, Ms. Meyer’s concern about potential discharge into the Ship Channel affecting tourism, and by extension her business, is not a justiciable interest entitling her to affected person status.

Additionally, in determining affected person status, the Commission may consider “distance restrictions or other limitations imposed by law on the affected interest[.]” 30 Tex. Admin. Code § 55.203(c)(2). The address provided

for Ms. Meyer is not within reasonable proximity of the proposed location of the desalination plant or Outfall 001.

To the extent that Ms. Meyer's recreational interests (swimming, kayaking, kitesurfing, and paddle boarding) are affected by the issuance of the Draft Permit, they are indistinguishable from interests held by members of the general public. All recreational interests listed in Ms. Meyer's hearing request occur beyond the mouth of the access-restricted Ship Channel.

If Ms. Meyer submitted this as a hearing request on her own accord, Texas Water Code Section 5.115 and 30 Texas Administrative Code Section 55.203(c) would require the Commission to deny her request because it does not describe personal justiciable interests. Accordingly, Ms. Meyer does not have standing in her own right to request a contested case hearing and her membership in HRA cannot be the basis for HRA's associational standing for its hearing request.

f. Daniel Pena<sup>12</sup>  
2813 Hulbirt St.  
Corpus Christi, Texas 78407-2601

The issues described by HRA on behalf of Mr. Pena do not meet the requirements of Texas Water Code Section 5.115 and 30 Texas Administrative Code Section 55.203(c). HRA states that Mr. Pena "is concerned about how

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<sup>12</sup> Daniel Pena also requested a contested case hearing on his own behalf. That request is addressed below.



construction and operation of the proposed facility will cause increased industrial truck traffic, dust, smells, and noise levels.” HRA also contends that Mr. Pena will suffer recreational impacts because he enjoys fishing on the “seawall near the mouth of the ship channel[.]”

In determining affected person status, the Commission may consider “whether the interest claimed is one protected by law under which the application will be considered,” and “whether a reasonable relationship exists between the interest claimed and the activity regulated[.]” 30 Tex. Admin. Code § 55.203(c)(1) and (3). The TCEQ’s regulatory authority does not include issues of increased traffic and noise. The proposed treatment plant has no structures or processes that require a buffer zone due to possible odor producing activities. Additionally, there is no reasonable relationship between increased truck traffic, dust, smells, or noise levels and discharges into the Ship Channel. As a result, Mr. Pena’s concerns of increased traffic, dust, smells, and noise are not justiciable interests entitling him to affected person status.

Additionally, while Mr. Pena lives near the proposed location of the desalination plant, he does not live and cannot recreate near Outfall 001 or along the access-restricted Ship Channel.

To the extent that Mr. Pena’s recreational interests (fishing) are affected by the issuance of the Draft Permit, they are indistinguishable from interests

held by members of the general public. All recreational interests listed in Mr. Pena's request take place beyond the mouth of the Ship Channel. Mr. Pena's recreational interests in these areas are common interests with members of the general public.

If Mr. Pena submitted this as a hearing request on his own accord, Texas Water Code Section 5.115 and 30 Texas Administrative Code Section 55.203(c) would require the Commission to deny it because he does not describe personal justiciable interests affected by the Application. Accordingly, Mr. Pena does not have standing in his own right to request a contested case hearing and his membership in HRA cannot be the basis for HRA's associational standing for its hearing request.

g. Tommy Joe ("TJ") Rodgers  
2222 Kennedy Avenue  
Corpus Christi, Texas 78407

Tommy Joe Rodgers did not submit comments on the Application. By this measure alone, he would not have standing in his own right to request a contested case hearing. On this basis, Mr. Rodgers' membership in HRA cannot be the basis for HRA's associational standing for its hearing request.<sup>13</sup>

Furthermore, the issues described by HRA on behalf of Mr. Rodgers do not meet the requirements of Texas Water Code Section 5.115 and 30 Texas

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<sup>13</sup> See 30 Tex. Admin. Code § 55.203(c)(6).

Administrative Code Section 55.203(c). HRA states that Mr. Rodgers “has legitimate concerns that the increased truck traffic from construction of the City’s proposed facility, and the sludge trucks required for regular operations, will wreak further havoc on his health and home.” HRA also contends that Mr. Rodgers’ recreational fishing will be affected by the issuance of the Draft Permit.

In determining affected person status, the Commission may consider “whether the interest claimed is one protected by law under which the application will be considered;” and “whether a reasonable relationship exists between the interest claimed and the activity regulated[.]” 30 Tex. Admin. Code § 55.203(c)(1) and (3). The TCEQ’s regulatory authority does not include issues of increased traffic. Additionally, there is no reasonable relationship between increased truck traffic and discharges into the Ship Channel. As a result, Mr. Rodgers’ concern about increased traffic and the resulting effect on his home are not interests that entitle him to affected person status.

Additionally, in determining affected person status, the Commission may consider “distance restrictions or other limitations imposed by law on the affected interest[.]” 30 Tex. Admin. Code § 55.203(c)(2). While Mr. Rodgers lives near the proposed location of the desalination plant, he does not live and cannot recreate near Outfall 001 or along the access-restricted Ship Channel.

To the extent that Mr. Rodgers' recreational interests (fishing) are affected by the issuance of the Draft Permit, they are indistinguishable from interests held by members of the general public. Mr. Rodgers' preferred fishing location (a canal near Whataburger Field) is open to and enjoyed by members of the general public.

If Mr. Rodgers submitted this as a hearing request on his own accord, Texas Water Code Section 5.115 and 30 Texas Administrative Code Section 55.203(c) would require the Commission to deny it because he does not describe personal justiciable interests affected by the Application. Accordingly, Mr. Rodgers does not have standing in his own right to request a hearing and his membership in HRA cannot be the basis for HRA's associational standing for its hearing request.

h. Reverend Henry J. Williams  
2422 Summers Street  
Corpus Christi, Texas 78407

Reverend Henry Williams does not live on or recreate along the access-restricted Ship Channel. Nevertheless, HRA states that Reverend Williams' "property interest to the proposed facility and outfall is a personal justiciable interest that will be impacted by the proposed facility."

In determining affected person status, the Commission may consider "distance restrictions or other limitations imposed by law on the affected interest[.]" 30 Tex. Admin. Code § 55.203(c)(2). HRA has not identified how the

proposed discharges will affect Reverand Williams' use of his property. Thus, HRA has not demonstrated that the impact of the discharge will affect Reverand Williams in a way distinguishable from interests share in common with members of the general public.

If Reverand Williams submitted this as a contested case hearing request on his own accord, Texas Water Code Section 5.115 and 30 Texas Administrative Code Section 55.203(c) would require the Commission to deny it because he does not describe personal justiciable interests. Accordingly, Reverand Williams does not have standing in his own right to request a hearing and his membership in HRA cannot be the basis for HRA's associational standing for its request.

- i. Wendell Williams  
1408 Stillman Avenue  
Corpus Christi, Texas 78407

Wendell Williams did not submit comments on the Application. By this measure alone, he would not have standing in his own right to request a contested case hearing. On this basis, Mr. Williams' membership in HRA cannot be the basis for HRA's associational standing for its hearing request.

Regardless, the issues described by HRA on behalf of Mr. Williams do not meet the requirements of Texas Water Code Section 5.115 and 30 Texas Administrative Code Section 55.203(c). HRA states that Mr. Williams "is particularly concerned about increased vibrations, noise, and potential

exposure to hazardous substances . . . he believes . . . is a result of nearby industry and industrial truck traffic.”

In determining affected person status, the Commission may consider “whether the interest claimed is one protected by law under which the application will be considered;” and whether a reasonable relationship exists between the interest claimed and the activity regulated. 30 Tex. Admin. Code § 55.203(c)(1) and (3). The TCEQ’s regulatory authority does not include issues of increased traffic and noise. Additionally, there is no reasonable relationship between increased truck traffic or noise and discharges into the Ship Channel. As a result, Mr. Williams’ concern about increased traffic and the alleged effect on his property are not the type of interests entitling him to affected person status.

If Mr. Williams submitted this as a contested case hearing request on his own accord, Texas Water Code Section 5.115 and 30 Texas Administrative Code Section 55.203(c) would require the Commission to deny it because he does not describe personal justiciable interests affected by the Application. Likewise, the Commission could not grant Mr. Williams’ request, if he filed one, because he did not submit comments on the Application. Accordingly, Mr. Williams does not have standing in his own right to request a hearing and his membership in HRA cannot be the basis for HRA’s associational standing for its hearing request.

**4. Monna L. Lytle**

1422 Kennedy Avenue  
Corpus Christi, Texas 78407  
And  
P. O. Box 9534  
Corpus Christi, Texas 78469-9534

Monna Lytle submitted a contested case hearing request on January 21, 2025, that read simply, “I request a contested case hearing.” Ms. Lytle provided no further information or documentation to support her request. As a result, Ms. Lytle’s request for a hearing does not comply with 30 Texas Administrative Code Section 55.201(d)(2) because it fails to “identify [her] personal justiciable interest affected by the application, including a brief, but specific written statement explaining in plain language [her] location and distance relative to the proposed facility or activity that is the subject of the application and how and why [she] believes [] she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public[.]” Ms. Lytle failed to identify why she is an affected person entitled to a contested case hearing and the Commission should deny her hearing request on that basis. Tex. Water Code § 5.556(c).

**5. Daniel Pena<sup>14</sup>**

2813 Hulbirt St.  
Corpus Christi, Texas 78407-2601

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<sup>14</sup> In addition to being listed as an affected person by HRA, Mr. Pena filed his own hearing request.

Daniel Pena submitted a request for a contested case hearing on January 21, 2025. In his request, Mr. Pena expresses concerns that the proposed facility will bring over 3,000 workers to his neighborhood. Mr. Pena's stated interest has no reasonable relationship to the TCEQ's consideration of Applicant's discharge permit because the issues he raises are outside the jurisdiction of the TCEQ's regulatory authority.

Mr. Pena does not raise any justiciable issues that are distinguishable from interests in common with members of the general public. As a result, Mr. Pena is not an affected person, and the Commission should deny his hearing request on that basis.

**6. Errol Alvie Summerlin**

1002 Bayshore Ct.  
Salisbury, Maryland 21804-8684  
and  
1017 Diomedes St.  
Portland, Texas 78374-1914

Errol Summerlin's request was received on January 21, 2025. The requestor does not contend he is an affected person entitled to a contested case hearing but instead expresses concerns on behalf of HRA. HRA and its members' affected person statuses are addressed above.

**APPLICANT'S RESPONSES TO REQUESTS FOR RECONSIDERATION**

Virtually all the bases offered in support of the RFRs submitted by the requestors (the "*RFR requestors*") are addressed in the Application materials



and the Draft Permit. The Applicant directs the Commissioners' attention to, and incorporates by this reference, the documents and materials on file with the Executive Director that formed the basis for the Draft Permit, including (1) the Draft Permit itself, (2) the Statement of Basis, (3) the City of Corpus Christi's compliance summary,<sup>15</sup> (4) the public notices of the NORI, NAPD (including notice of public meeting on April 18, 2024), and the public notice of the March 13, 2025 Commissioners' agenda, as well as (5) all other documents that the Executive Director determines are necessary to reflect the agency staff's administrative and technical review of the Application.

High-visibility projects lend themselves to a diversity of views and dissents. This Project is not unique in that regard. The Executive Director reviewed the volume of comments on the March 2024 Draft Permit, including those from EPA Region 6, in tandem with the agency staff's technical review of the Application. The Executive Director issued the Draft Permit in response to public comment and EPA recommendations.

The administrative record demonstrates that the Application was scrutinized by multiple technical experts whose job is to ensure that the requested discharges will meet all legal and technical requirements. These experts include several agency technical staff and staff attorneys, in addition

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<sup>15</sup> Attachment A.

to multiple consultants and subject-matter experts—each well-credentialed and experienced in their fields—commissioned by the Applicant to develop the Application and the Project. Much of their technical analysis and professional judgment was presented under one or more professional engineering seals. The Draft Permit is a manifestation of the Executive Director’s independent assessment of this entire body of work. There is no basis for the Commission to disregard the Executive Director’s analysis and conclusions borne from its five-year application review effort.

The Application was reviewed not just by the Executive Director, however. As indicated earlier, the Executive Director also provided the Application and supporting materials to the EPA following a request from the Region 6 Administrator’s office. Region 6 reviewed the materials over the course of several months “to assess and discuss the potential impacts of the proposed discharge to the receiving water body and surrounding community.”<sup>16</sup> Notably, the EPA’s decision to not object to the Application was a conclusion reached by the Regional Administrator serving under the prior presidential administration.

Most of the RFR requestors’ arguments for reconsideration can be traced back to their opinions regarding water quality modeling. Specifically, HRA,

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<sup>16</sup> Attachment B.

Jason Hale, Errol Summerlin, John Weber, and Sierra Club each argue that the water quality modeling conducted for the Application is deficient. Their differences of opinion, however, do not change the fact that multiple water quality assessments conducted by the Executive Director and the Applicant show that the proposed discharges will not cause “dead zones.” Their argument to the contrary is conjecture.

Similarly, most of the RFR requestors embrace a model that was built with assumptions and inputs tailored to a distant, conceptualized desalination project that has no relationship to the Inner Harbor Project. The RFR requestors’ mere discussion of the model, however, does not erase the supported conclusions that the Draft Permit, if issued in its current form, will protect human health and safety, the environment, and physical property.

Furthermore, statements from Applicant’s selected design-build firm regarding its approach to designing the outfall diffuser—another issue raised by the RFR requestors—do not signal a deficiency in the Application or an inadequacy in the supporting modeling. They merely reflect that the contractor intends to use a variety of tools, including water quality modeling, to ensure that the diffuser it designs will allow the City to discharge in compliance with the Draft Permit. The type of modeling chosen by the project contractor to develop construction plans and specifications for the diffuser is a matter of the

best professional judgment of licensed professional engineers and other design professionals involved with the Project.

In addition to modeling, HRA takes issue with the Executive Director's antidegradation, aquatic life analysis, and biomonitoring protocol. HRA's arguments on this issue are largely reiterations of its arguments regarding modeling and restating comments that were addressed in the Executive Director's RTC. For example, the Executive Director's antidegradation review discussed in the Statement of Basis addresses HRA's comments regarding salinity gradients HRA attributes to the proposed discharge. In addition, HRA argues that red drum larvae should be the test species for whole effluent toxicity ("*WET*") analysis. But there is no EPA-approved toxicity testing method for red drum larvae for marine and estuarine environments. *See* 40 C.F.R. Part 136. The silverside minnow and mysid shrimp are established lab species for toxicity testing in marine environments. The Sierra Club argues that the critical dilutions in the Draft Permit are inappropriately based exclusively on red drum larvae. While the Draft Permit references red drum larvae as an illustration, the species was not the sole basis for the permit criteria. In fact, the percentage effluent criteria in the Draft Permit were developed based on analysis included in the Application that considered the tolerances of multiple species across their life stages, including blue crab.

Finally, Daniel Pena's request is based on his concerns with facility construction activities. These are issues, however, that are outside of the province of the Commission. It would be inappropriate for the Commission to order reconsideration based on Mr. Pena's concerns.

None of the RFR requestors (nor those of their cited supporters), offer any rational bases to set aside the technical opinions and conclusions of the Executive Director staff and Applicant's technical experts. When taken together, there are volumes of evidence in the administrative record that support a decision to deny each of the RFRs. Furthermore, the administrative record supports Commission approval of the Application and its issuance of TPDES Permit No. WQ0005289000 that models the Draft Permit. The Applicant respectfully requests that the Commission deny each of the RFRs.

#### **CONCLUSION AND PRAYER FOR RELIEF**

Based on the arguments and support provided above, Applicant respectfully requests that the Commission (i) deny each request for reconsideration; (ii) determine that no hearing request meets the requirements of applicable TCEQ rules; (iii) direct the Executive Director to approve the Application and issue TPDES Permit No. WQ0005289000 as proposed in the Draft Permit, and (iv) award Applicant all other relief to which it is lawfully entitled.

Respectfully Submitted,

Allensworth  
303 Colorado Street, Suite 2800  
Austin, Texas 78701  
(512) 708-1250 Telephone  
(512) 708-0519 Facsimile

*/s/ Jason T. Hill*

By: \_\_\_\_\_

Jason T. Hill

State Bar No. 24046075

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**ATTORNEYS FOR APPLICANT CITY  
OF CORPUS CHRISTI**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of February, 2025, the foregoing response was filed electronically with the Office of the Chief Clerk of the Texas Commission on Environmental Quality and was delivered as indicated to the persons on the attached Service List.

*/s/ Jason T. Hill*  
\_\_\_\_\_  
Jason T. Hill

**Service List  
City Corpus Christi  
Application for TPDES Permit No. WQ0005289000  
TCEQ Docket No. 2025-0114-IWD**

**OFFICE OF THE CHIEF CLERK**

Docket Clerk

TCEQ Office of Chief Clerk, MC-105

P.O. Box 13087

Austin, Texas 78711

(512) 239-3300 telephone

(512) 239-3311 fax

*Via agency filing service: <https://www.tceq.texas.gov/goto/efilings>*

**EXECUTIVE DIRECTOR:**

Kathy Humphreys, Staff Attorney

Texas Commission on Environmental Quality

Environmental Law Division, MC-173

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*Via Certified Mail and Via Email: [Kathy.humphreys@tceq.texas.gov](mailto:Kathy.humphreys@tceq.texas.gov)*

Thomas Starr, Technical Staff

Texas Commission on Environmental Quality

Water Quality Division, MC-148

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Texas Commission on Environmental Quality

External Relations Division

Public Education Program, MC-108

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**OFFICE OF PUBLIC INTEREST COUNSEL:**

Garrett T. Arthur, Public Interest Counsel  
Texas Commission on Environmental Quality  
Office of Public Interest Counsel, MC-103  
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Austin, Texas 78711-3087

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**ALTERNATIVE DISPUTE RESOLUTION**

Kyle Lucas

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

Austin, Texas 78711

*Via Certified Mail and Via Email:* [kyle.lucas@tceq.texas.gov](mailto:kyle.lucas@tceq.texas.gov)

**REQUESTORS**

*Via Certified Mail, Return Receipt Requested, and Via Email:*

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### **Sierra Club Lone Star Chapter**

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[John.Weber.411449601@p2a.co](mailto:John.Weber.411449601@p2a.co)

# **Attachment A**

**From:** Matthew Udenenwu matthew.udenenwu@tceq.texas.gov  
**Subject:** RE: Corpus Christi Inner Harbor Desalination Plant WQ0005289000  
**Date:** May 6, 2024 at 4:17 PM  
**To:** Hayes, Mark hayes.mark@epa.gov, Baskin, Kilty Baskin.Kilty@epa.gov  
**Cc:** Ryland, Renea Ryland.Renea@epa.gov, Jones, Curry jones.curry@epa.gov, Thomas Starr Thomas.Starr@Tceq.Texas.Gov, Alyssa Loveday Alyssa.Loveday@tceq.texas.gov, Robert Sadlier Robert.Sadlier@tceq.texas.gov

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On September 20, 2021, EPA terminated its permit review waiver of permits for desalination facilities. EPA's termination of a review waiver is not retroactive and does not apply to applications received by the agency before September 20, 2021. The City of Corpus Christi Inner Harbor Desalination Plant application (WQ0005289000) was received by TCEQ on January 22, 2020, prior to EPA's September 20, 2021 termination of permit review waiver for desalination facilities.

In response to your request to review, we have attached a courtesy copy of the draft permit package (the NAPD; Technical Summary; and Draft Permit) and the Compliance History document for your use. These documents and the application materials will officially be transmitted to you by our Customer Information & Assistance Team as soon as practicable.

Please let me know if you have any questions.

Matthew Udenenwu, Manager  
Wastewater Permitting Section  
Water Quality Division  
Texas Commission on Environmental Quality  
512-239-6922

-----Original Message-----

From: Hayes, Mark <hayes.mark@epa.gov>  
Sent: Wednesday, April 24, 2024 4:41 PM  
To: Matthew Udenenwu <matthew.udenenwu@tceq.texas.gov>; Baskin, Kilty <Baskin.Kilty@epa.gov>  
Cc: Ryland, Renea <Ryland.Renea@epa.gov>; Jones, Curry <jones.curry@epa.gov>; Thomas Starr <Thomas.Starr@Tceq.Texas.Gov>  
Subject: RE: Corpus Christi Inner Harbor Desalination Plant WQ0005289000

Thanks for the clarification, Matthew. When can EPA expect to see a copy of the draft permit from TCEQ for review?

-----Original Message-----

From: Matthew Udenenwu <matthew.udenenwu@tceq.texas.gov>  
Sent: Wednesday, April 24, 2024 4:28 PM  
To: Baskin, Kilty <Baskin.Kilty@epa.gov>  
Cc: Ryland, Renea <Ryland.Renea@epa.gov>; Jones, Curry <jones.curry@epa.gov>; Thomas Starr <Thomas.Starr@Tceq.Texas.Gov>; Hayes, Mark <hayes.mark@epa.gov>  
Subject: RE: Corpus Christi Inner Harbor Desalination Plant WQ0005289000

Caution: This email originated from outside EPA, please exercise additional caution when deciding whether to open attachments or click on provided links.

Good afternoon, Kilty:

You are correct Kilty, our process is to draft the permit, mail and have the applicant publish the second notice (NAPD), before holding the public meeting. For this particular case, the combine NAPD and public meeting notice was mailed on 03/06/2024 and published 3/15/2024. Thanks!

Matthew Udenenwu, Manager  
Wastewater Permitting Section  
Water Quality Division  
X6922

-----Original Message-----

From: Baskin, Kilty <Baskin.Kilty@epa.gov>  
Sent: Wednesday, April 24, 2024 1:04 PM  
To: Thomas Starr <Thomas.Starr@Tceq.Texas.Gov>; Hayes, Mark <hayes.mark@epa.gov>; Matthew Udenenwu

to: Thomas Starr <thomas.starr@tceq.texas.gov>; Hayes, Mark <hayes.mark@epa.gov>; Matthew Udenenwu <matthew.udenenwu@tceq.texas.gov>

Cc: Baskin, Kilty <Baskin.Kilty@epa.gov>; Ryland, Renea <Ryland.Renea@epa.gov>; Jones, Curry <jones.curry@epa.gov>

Subject: Corpus Christi Inner Harbor Desalination Plant WQ0005289000

Good afternoon, Thomas/Matthew. Hope you're having a good week. I was finally able to listen to the recording of the public meeting for the City of Corpus Christi Inner Harbor desalination plant. It was mentioned that a DRAFT permit was developed and concurrence from the applicant was received and thus the draft package was publicly noticed on March 15, 2024. Is this correct? Based on our previous letter (see attachment) that basically cites that the TCEQ shall submit draft permits for all existing and proposed desalination projects for our review in accordance with the procedures of the MOA (i.e., during the public participation process). Would you provide clarification and/or confirm if the DRAFT permit was already publicly noticed? Feel free to contact me if you would like to discuss further.

Thanks for your time.

Kilty Baskin  
State Coordinator  
NPDES Review Section (WD-PN)  
EPA Region 6  
Phone: (214) 665-7500  
Email: baskin.kilty@epa.gov

**5289Compliance History Report**  
**.pdf**  
99 KB



**WQ0005289000.docx**  
465 KB





# Compliance History Report

Compliance History Report for CN600131858, RN110940152, Rating Year 2023 which includes Compliance History (CH) components from September 1, 2018, through August 31, 2023.

<b>Customer, Respondent, or Owner/Operator:</b>	CN600131858, City of Corpus Christi	<b>Classification:</b> SATISFACTORY	<b>Rating:</b> 1.72
<b>Regulated Entity:</b>	RN110940152, INNER HARBOR DESALINATION PLANT	<b>Classification:</b> UNCLASSIFIED	<b>Rating:</b> -----
<b>Complexity Points:</b>	3	<b>Repeat Violator:</b>	NO
<b>CH Group:</b>	14 - Other		
<b>Location:</b>	INTERSECTION OF NUECES BAY BLVD & E BROADWAY ST NUECES, TX, NUECES COUNTY		
<b>TCEQ Region:</b>	REGION 14 - CORPUS CHRISTI		
<b>ID Number(s):</b>			
<b>WASTEWATER PERMIT</b> WQ0005289000	<b>WASTEWATER EPA ID</b> TX0139874		
<b>Compliance History Period:</b>	September 01, 2018 to August 31, 2023	<b>Rating Year:</b> 2023	<b>Rating Date:</b> 09/01/2023
<b>Date Compliance History Report Prepared:</b>	November 22, 2023		
<b>Agency Decision Requiring Compliance History:</b>	Permit - Issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.		
<b>Component Period Selected:</b>	September 01, 2018 to August 31, 2023		
<b>TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.</b>			
<b>Name:</b>	Thomas Starr	<b>Phone:</b>	(512) 239-4570

## Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

## Components (Multimedia) for the Site Are Listed in Sections A - J

**A. Final Orders, court judgments, and consent decrees:**  
N/A

**B. Criminal convictions:**  
N/A

**C. Chronic excessive emissions events:**  
N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**  
N/A

**E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

**F. Environmental audits:**  
N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

# **Attachment B**



**REGION 6**

DALLAS, TX 75270

October 11, 2024

**TRANSMITTED VIA EMAIL**

Mr. Matthew Udenenwu, Section Manager  
Wastewater Permitting Section (MC-148)  
Texas Commission on Environmental Quality (TCEQ)  
Post Office Box 13087  
Austin, Texas 78711-3087  
[Matthew.udenenwu@tceq.texas.gov](mailto:Matthew.udenenwu@tceq.texas.gov)

Re: TPDES Permit No. TX0139874 (WQ0005289000)  
City of Corpus Christi Inner Harbor Desalination Plant

Dear Mr. Udenenwu:

Thank you for the opportunity to review the draft permit for the City of Corpus Christi Inner Harbor Desalination Plant (TPDES Permit No. TX0139874, WQ0005289000) received by our office on May 7, 2024, with an initial deadline for the EPA's review of June 21, 2024. We thank you for the review extensions your agency provided that allowed additional time to assess and discuss the potential impacts of the proposed discharge to the receiving water body and the surrounding community. We appreciate your time and the City of Corpus Christi's time where additional information was provided. Based on our review of the revised permit and fact sheet, EPA does not plan to object to the TCEQ's issuance of the draft permit.

If you have any questions or concerns, please contact me at (214) 665-6793, or [jones.curry@epa.gov](mailto:jones.curry@epa.gov).

Sincerely,

Curry Jones  
Branch Manager  
Permitting & Water Quality Branch

cc (electronic): Thomas E. Starr, P.E. ([Thomas.starr@tceq.texas.gov](mailto:Thomas.starr@tceq.texas.gov))  
TCEQ