



UNITED FOR A HEALTHY GULF

541 Julia Street, Suite 300, New Orleans, LA 70130
Phone: 504.525.1528 Fax: 504.525.0833

July 8, 2014

LDEQ Public Participation Group
P.O. Box 4313
Baton Rouge, LA 70821-4313
DEQ.PUBLICNOTICES@LA.GOV

RE: Draft Water Discharge Permit, H2O Systems, Inc. / WREDCO Weyerhaeuser Real Estates & Development
AI Number 153566
Permit Number LA 0123382
Activity Number PER20130001

Dear Public Participation Group:

The Gulf Restoration Network (GRN) respectfully submits the following comments on the Draft Water Discharge Permit: H2O Systems, Inc./WREDCO Weyerhaeuser Real Estates & Development, Permit Number LA 0123382 (Draft Permit). GRN reserves the right to rely on all public comments submitted, request a written response to our comments, and request written notification when any action is taken on this Draft Permit (issuance, denial, remand, etc.).

1. An antidegradation analysis must be done.

LDEQ has not shown that it meets federal and state antidegradation requirements for the receiving water bodies. The federal antidegradation laws provide that “[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected” (40 C.F.R. § 131.12(a)(1)). Louisiana’s antidegradation policy mirrors this requirement, commonly known as “Tier 1 protection,” stating that “the administrative authority will not approve any wastewater discharge . . . that would impair water quality or use of state waters” (La. Admin. Code, tit. 33, pt. IX, § 1109). Thus, before the LDEQ can issue a permit, it has a duty to ensure that the permit protects the receiving water body’s designated uses (See, e.g., 40 C.F.R. § 122.44(d)(1)(vi)(A) (when the state issues a permit, the state must “demonstrate [] [the permit] . . . will fully protect the designated use”). Where water quality exceeds levels necessary to support designated uses, antidegradation rules require “Tier 2” protection for the water body. See 40 C.F.R. § 131.12(a)(2). According to the Statement of Basis, receiving waters are meeting some of their uses, and thus water quality supporting these uses must not only be maintained (Tier 1 protection), but if the quality of the receiving water exceeds these levels, “that quality shall be maintained and protected unless the State finds, after [public participation], that allowing lower water quality is necessary to accommodate important economic or social development in the area...” (40 C.F.R. § 131.12(a)(2); see La. Admin., Code, tit. 33, pt. IX, §

1119 (“State policy is that all waters of the state ...whose existing quality exceeds the specifications of the approved water quality standards...will be maintained at their existing high quality...[unless] to accommodate justifiable economic and /or social development in the areas.”)).

According to p. 5 in the Statement of basis (“...the facility has not been constructed yet”) and the public notice, this is a new discharge into Lake Pontchartrain. As a new discharger LDEQ or the applicant must submit a Tier 2 antidegradation analysis that is consistent with 40 C.F.R § 131.12(a)(2) and La. Admin. Code, tit 33, pt. IX, § 1119.

We request that this permit be withdrawn and re-issued with an antidegradation analysis for the receiving waters.

2. LDEQ should not allow new discharges into impaired waters

While it appears that the proposed discharge will not end up in Bayou Cane, this waterbody subsegment is still listed as impaired, and thus under §303(d) of the Clean Water Act, Bayou Castine is still in need of TMDL.

According to 40 CFR §122.4(i), no permit may be issued:

(i) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by sections 301(b)(1)(A) and 301(b)(1)(B) of CWA, and for which the State or interstate agency has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

- (1) There are sufficient remaining pollutant load allocations to allow for the discharge; and
- (2) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards.

Given the lack of information in the Statement of Basis, this regulation has not been fulfilled. According to the page 3 of the Statement of Basis, the receiving subsegment is listed for dissolved and further states that the current TMDL for Bayou Cane does not cover this discharge. Therefore this discharger is proposing to discharge dissolved oxygen-depleting substances (CBOD₅ and Ammonia-Nitrogen) into a water body listed as impaired for low dissolved oxygen without a TMDL. Given that this waterbody is already impaired, adding more pollution would “cause or contribute to the violation of water quality standards” and is not allowable under Federal regulations.

Due to the above concerns, we request that LDEQ either adequately modify the Draft Permit to address these concerns, or withdraw the permit.

Sincerely,



Matt Rota
Senior Policy Director



Erin Murphy
Legal Intern

CC:

Geri Robinson, Tulane Environmental Law Clinic
Brad Crawford, USEPA Region 6
Kilty Baskin, USEPA Region 6
Andrea Calvin, Lake Pontchartrain Basin Foundation