



Control Number: 50961



Item Number: 10

Addendum StartPage: 0



DOCKET NO. 50961

**APPLICATION OF NERRO SUPPLY, §
LLC AND UNDINE TEXAS §
ENVIRONMENTAL, LLC FOR SALE, §
TRANSFER OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN CHAMBERS AND §
HARRIS COUNTIES §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

APPLICANTS' FIRST AMENDMENT TO APPLICATION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Undine Texas Environmental, LLC (“Undine”) and Nerro Supply, LLC (“Nerro”) file this First Amendment to Application. In support thereof, Undine and Nerro state the following:

On June 19, 2020, Undine and Nerro submitted an application for sale, transfer or merger of facilities and certificate rights in Chambers and Harris Counties. Undine has identified an error in the application. Attached as Exhibit A is a substitute page 8 of the application correcting Undine’s response to item no. 18 and the relevant attachments for that corrected response. Attached as Exhibit B are a new Oath of Transferor and Oath of Transferee for the application as amended.

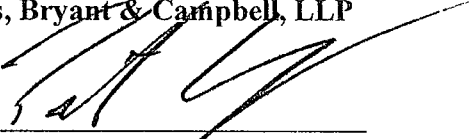
If for any reason Commission Staff does not view the attachments as sufficient for application acceptance, Undine respectfully requests that it be notified immediately and provided an opportunity to cure any deficiencies that are identified.

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Respectfully submitted,

DuBois, Bryant & Campbell, LLP

By: _____


Peter T. Gregg
State Bar No. 00784174
303 Colorado, Suite 2300
Austin, Texas 78701
pgregg@dbcllp.com
(512) 457-8000
(512) 457-8008 (fax)

**Attorneys for Undine Texas
Environmental, LLC**

CERTIFICATE OF SERVICE

I certify by my signature above that a true and correct copy of the foregoing document was served by email on this the 6th day of July, 2020, to:

Merritt Lander
Public Utility Commission of Texas
Legal Division
1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326
merritt.lander@puc.texas.gov

EXHIBIT A

**SUBSTITUTED PAGE 8 OF THE APPLICATION
AND ATTACHMENTS**

Part E: CCN Obtain or Amend Criteria Considerations

16. Describe, in detail, the anticipated impact or changes in the quality of retail public utility service in the requested area as a result of the proposed transaction:

Undine Texas, LLC intends to raise the standards of quality for: 1) customer service, 2) customer and regulatory communications, 3) all regulatory compliance issues.

17. Describe the transferee's experience and qualifications in providing continuous and adequate service. This should include, but is not limited to: other CCN numbers, water and wastewater systems details, and any corresponding compliance history for all operations.

Please see Attachment 'E'

18. Has the transferee been under an enforcement action by the Commission, TCEQ, Texas Department of Health (TDH), the Office of the Attorney General (OAG), or the Environmental Protection Agency (EPA) in the past five (5) years for non-compliance with rules, orders, or state statutes? Attach copies of any correspondence with the applicable regulatory agency(ies)

No Yes

19. Explain how the environmental integrity or the land will be impacted or disrupted as a result of the proposed transaction:

The quality of drinking water is extremely important to us. We believe in investment in procedure and treatment to ensure that the water supplied to our customers is safe to drink. This begins with the protection of our water sources and continues with the quality control in the water treatment process and the maintenance of the distribution system. Our commitment to maintaining regulatory standards in all of our systems means a safe, clean water supply and a healthy living environment.

20. How will the proposed transaction serve the public interest?

The public will be better served through Undine Texas, LLC ownership of water and/or wastewater utilities due to the improvements to utility customer service and the improvements to operations and maintenance. The EPA reports to Congress state that the best possible future for small to midsize privately owned utilities is to be acquired by a larger more responsible provider that possesses the financial, managerial and technical experience to insure the system meets regulatory requirements.

21. List all neighboring water or sewer utilities, cities, districts (including ground water conservation districts), counties, or other political subdivisions (including river authorities) providing the same service within two (2) miles from the outer boundary of the requested area affected by the proposed transaction:

Please See Attachment 'E'

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
UNDINE TEXAS
ENVIRONMENTAL, LLC
RN101522464

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2019-0830-MWD-E

On MAY 06 2020, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Undine Texas Environmental, LLC (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this Order to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a wastewater treatment facility located approximately 1,700 feet south-southwest of the Brazos River bridge crossing on Farm-to-Market Road 1189 in Parker County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. During a record review conducted on May 21, 2019, an investigator documented that the Respondent failed to comply with permitted effluent limitations, as shown in the effluent violation table below:

Monitoring Period	Total Residual Chlorine	Total Phosphorus		
	Monthly Maximum Concentration	Daily Average Concentration	Single Grab Concentration	Daily Average Loading
	Limit = 4 milligrams per liter	Limit = 1 milligrams per liter	Limit = 6 milligrams per liter	Limit = 0.32 pounds per day
March 2018	8.8	2.9	6.37	c
April 2018	c	2.6	c	c
May 2018	c	1.14	c	c
June 2018	c	3.4	c	c
July 2018	c	3.78	7.19	0.51
August 2018	c	2.81	6.14	0.62
September 2018	c	1.15	c	c

c = compliant

II. CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, the Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2, the Respondent failed to comply with permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System Permit No. WQ0014163001, Interim I Effluent Limitations and Monitoring Requirements Nos. 1 and 2.
3. Pursuant to TEX. WATER CODE § 7.051, the TCEQ has the authority to assess an administrative penalty against the Respondent for violations of state statutes within the TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of \$6,375 is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent paid the \$6,375 penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed a penalty as set forth in Conclusion of Law No. 4 for violations of state statutes and rules of the TCEQ. The payment of this penalty and the Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations that are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Undine Texas Environmental, LLC, Docket No. 2019-0830-MWD-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall, within 130 days after the effective date of this Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0014163001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall be signed by the Respondent and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951


3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.
7. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
10. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and

may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

11. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY


For the Commission

5/12/2020
Date


For the Executive Director

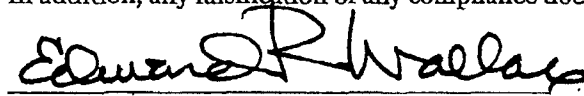
3/2/2020
Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this Order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

8/26/2019
Date

Edward R Wallace
Name (Printed or typed)

President & CEO
Title

Authorized Representative of
Undine Texas Environmental, LLC

If mailing address has changed, please check this box and provide the new address below:

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

May 14, 2020

FIRST CLASS MAIL

Edward R. Wallace, President and Chief Executive Officer
Undine Texas Environmental, LLC
17681 Telge Road
Cypress, Texas 77429

RE: Undine Texas Environmental, LLC
TCEQ Docket No. 2019-0830-MWD-E; Permit No. WQ0014163001
Agreed Order Assessing Administrative Penalties and Requiring Certain Actions

Enclosed is a copy of an order issued by the Commission.

Questions regarding the order should be directed to the Texas Commission on Environmental Quality's Enforcement Division at (512) 239-2545 or the Litigation Division at (512) 239-3400. If there are questions pertaining to the mailing of the order, then please contact Michael O'Malley of the Office of the Chief Clerk at (512) 239-3300.

Sincerely,

A handwritten signature in cursive script that reads "Bridget C. Bohac".

Bridget C. Bohac
Chief Clerk

BCB/mgo

Enclosure

cc: Aaron Vincent, Enforcement Coordinator, TCEQ Enforcement Division

EXHIBIT B

OATH OF TRANSFEROR AND OATH OF TRANSFEREE

Oath for Transferee (Acquiring Entity)

STATE OF TEXAS

COUNTY OF HARRIS

I, Carey A. Thomas being duly sworn, file this application for sale, transfer, merger, consolidation, acquisition, lease, or rental, as Sr. Vice President and Secretary

(owner, member of partnership, title as officer of corporation, or authorized representative)

I attest that, in such capacity, I am qualified and authorized to file and verify such application, am personally familiar with the documents filed with this application, and have complied with all the requirements contained in the application; and, that all such statements made and matters set forth therein with respect to Applicant are true and correct. Statements about other parties are made on information and belief. I further state that the application is made in good faith and that this application does not duplicate any filing presently before the Commission.

I further state that I have been provided with a copy of the 16 TAC § 24.109 Commission rules. I am also authorized to agree and do agree to be bound by and comply with any outstanding enforcement orders of the Texas Commission on Environmental Quality, the Public Utility Commission of Texas or the Attorney General which have been issued to the system or facilities being acquired and recognize that I will be subject to administrative penalties or other enforcement actions if I do not comply.

Carey A. Thomas

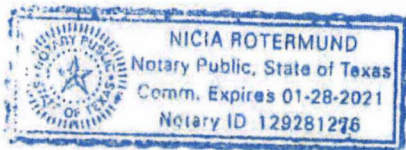
AFFIANT

(Utility's Authorized Representative)

If the Affiant to this form is any person other than the sole owner, partner, officer of the Applicant, or its attorney, a properly verified Power of Attorney must be enclosed.

SUBSCRIBED AND SWORN BEFORE ME, a Notary Public in and for the State of Texas this day the 2nd of July, 2020

SEAL



Nicia Rotermund

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

Nicia Rotermund

PRINT OR TYPE NAME OF NOTARY

My commission expires: January 28, 2021

Oath for Transferor (Transferring Entity)

STATE OF Texas

COUNTY OF Harris

I, Charles Peterson being duly sworn, file this application for sale, transfer, merger, consolidation, acquisition, lease, or rental, as President

(owner, member of partnership, title as officer of corporation, or authorized representative)

I attest that, in such capacity, I am qualified and authorized to file and verify such application, am personally familiar with the documents filed with this application, and have complied with all the requirements contained in the application; and, that all such statements made and matters set forth therein with respect to Applicant are true and correct. Statements about other parties are made on information and belief. I further state that the application is made in good faith and that this application does not duplicate any filing presently before the Commission.

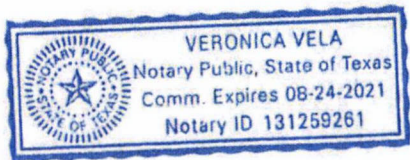
I further state that I have provided to the purchaser or transferee a written disclosure statement about any contributed property as required under Texas Water Code § 13.301(j) and copies of any outstanding enforcement Orders of the Texas Commission on Environmental Quality, the Public Utility Commission of Texas, or Attorney General and have also complied with the notice requirements in Texas Water Code § 13.301(k).

Chas Peterson President
AFFIANT Nerro Supply Investors, LLC
(Utility's Authorized Representative)

If the Affiant to this form is any person other than the sole owner, partner, officer of the Applicant, or its attorney, a properly verified Power of Attorney must be enclosed.

SUBSCRIBED AND SWORN BEFORE ME, a Notary Public in and for the State of Texas this day the 30 of June, 20 20

SEAL



Veronica Vela
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

Veronica Vela
PRINT OR TYPE NAME OF NOTARY

My commission expires: 08/24/2021