

**SOAH DOCKET NO. 582-20-1895
TCEQ DOCKET NO. 2019-1156-IWD**

**APPLICATION OF PORT OF
CORPUS CHRISTI AUTHORITY
OF NUECES COUNTY FOR TPDES
PERMIT NO. WQ0005253000**

**BEFORE THE
STATE OFFICE OF
ADMINISTRATIVE HEARINGS**

**Aligned Pro-se Group
Stacey Bartlett, Jo Ellyn Krueger, Sarah Searight and Lisa Turcotte**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

The aligned pro-se group with: Stacy Barlett, Jo Ellyn Kruger, Sarah Searight and Lisa Turcotte appreciates the opportunity we've had to participate in this SOAH process, including the hearing. We want to thank you Judges, Rebecca Smith and Cassandra Quinn, for allowing this pro-se group to complete the process and submit this closing statement. We hope you understand, this group speaks for many people in Port Aransas, along with surrounding towns; people that have been here for generations. Please forgive our lack of knowledge concerning Administrative Law. We have done our best to learn what we could in a short period of time and apologize for not using proper legal format.

Our group is grateful to Your Honors for the patience and direction through these proceedings. It's reassuring to know we (pro-se group) have been recognized and respectfully heard. Thank-you both for your public service to the State of Texas and for taking time to consider our points, concerns and our request that this permit be denied. We also want to thank all the people in Port Aransas that helped and supported our efforts throughout this process.

BRIEF DESCRIPTION OF HARBOR ISLAND HISTORY

There is no heavy industry on Harbor Island. Historically, there was a tank farm for receiving oil from small tankers along with an offshore support facility that carried goods to ships and a fabrication facility. These facilities did not have permanent discharge into the ship channel. The tank farm was slowly dismantled starting in the latter 1980's. Crude oil leaked from many tanks for years, contaminating both soil and groundwater. Off and on, over about 20 years, remediation efforts have occurred, but to date Harbor Island is still contaminated, though some of it was "cleaned" to an industrial level. But not all of the contamination has been addressed.



Live Screen shot of Harbor Island – November 9, 2020 SOAH Hearing

Presently Harbor Island is zoned light industrial, meaning no fixed, permanent discharge or emissions. Currently Gulf Copper leases a portion of Harbor Island from the Ed Rachel Foundation and offloads bulk cargo from small ships. Martin Midstream operates an offshore support facility and the few storage tanks left on Harbor Island supply fuel for the offshore boats. Contrary to the Port of Corpus Christi's claim that Harbor Island is heavy industrial, it is not and never has been.

BACKGROUND AND DISCUSSION

In our opening statement we said “over 4,000 comments were officially logged by TCEQ.” That was incorrect, because that is the number for the Lone Star Ports Air Quality application. The number of comments officially logged for desal application was over 1,000. To date, we have collected nearly 40,000 signatures against this application and all the other POCC applications for Harbor Island. We know how many people have signed the numerous petitions because we participate in collecting signatures. Sean Strawbridge stated at a POCC meeting in October 2020, the Army Corps of Engineers has received more comments about Harbor Island applications than they have received in fifteen (15) years! The most comments in 15 years should be screaming volumes about the critical nature of this ecological hotspot. These numbers just can’t be pushed aside and denied!

The live screen shot behind Cathy Fulton on day 4 and 5 of the hearing was of the city marina, Robert’s Point Park, and a few times she had Harbor Island in the background.



Live screen shot Port Aransas City Marina, November 9, 2020

People fish right there, every day at Robert’s Point facing Harbor Island. This is not in our backyard, it’s in our front yard where they want to dump brine and whatever unknown chemicals, directly into waters we fish. It was wall to wall people fishing

at the jetty and park this year. Robert's Point Park is also the gathering area for community events, live music, picnics, memorial services and major fishing tournaments. Harbor Island is only 1000 feet across from Roberts Point Park and people WILL be fishing in the ZID (zone of initial dilution).

In our opinion, the POCC intentionally took advantage of our upside-down world in the aftermath of Hurricane Harvey, a category 4 storm. Harvey devastated the towns of Port Aransas, Aransas Pass and Rockport on August 25, 2017. No one escaped damage to homes and businesses.



The eyewall of Hurricane Harvey hovered over Port Aransas for hours with winds in excess of 135 mph.

Many citizens moved to nearby communities while homes were being rebuilt. Others had to concede defeat and move off the island.



It was well over a year before most got back into their homes. Some in this group have moved 4 or more times in the last 3 years. To say we were distracted is an understatement. Most of us had, "Harvey brain" and could not focus on anything more than helping our friends and neighbors and rebuilding the city, while the POCC sat idly by.

In the POCC application, the port is listed as the owner. There is no operator of the facility noted. At the port's September 15, 2020 regular meeting, there was discussion about the POCC's role with desalination. One of the commissioners questioned if the port was going to be a water distributor – supplier. Chairman Charley Zahn stated, "the port will not own, operate or build a desalination facility. We are in the process of trying to get the permits in order to meet the concerns our industry partners had about having an uninterruptable source of water. In order for us to be a wholesale water supplier, we would have to build, own and operate." A transcript of the meeting is in PAC exhibit 24 and is available for viewing at, <https://portofcc.com/about/commission/commission-agendas/> and starts at 2:12:30 on the video. How can the application be complete if the POCC is not going to own or operate the facility? *It's like issuing a signed, blank check.*

How is the applicant allowed to not properly fill out this application? How can they omit critical information like chemicals to be used or who will be the owner/operator? The POCC claimed through a resolution the intake will be offshore, but have yet to define where. What will be the "make-up" of the intake water? What about the metals, especially copper? As you know, a resolution carries little weight unless it is ordinance, directive, or law. They could change their mind or the entity that buys the permit could just ignore the POCC resolution. Resolutions don't hold water!

We know our public officials with the City of Port Aransas made a decision to drop its contested case. To be clear, the city did not come out in support of the desalination plant or the Port of Corpus Christi. Our city leaders chose not to oppose the application any longer, primarily because of money. The majority of citizens strongly disagreed with the city's decision, and it created quite a bit of angst in the community. However, in the end, we understand and, in our opinion, the Port of Corpus Christi has bullied Port Aransas with threats of taking our city marina, lawsuits and empty promises.



Dolphin Adventure goes by Robert's Point Park (Harbor Island in background)

It is amazing to us that the Port of Corpus Christi shows such disregard to the science itself. Redfish Bay State Scientific Area (Brochure link, https://tpwd.texas.gov/publications/pwdpubs/media/pwd_br_v3400_1101.pdf) is a vital nursery for sustaining both marine organisms and non-aquatic life. Endangered species like the piping plover and whooping cranes are dependent on a healthy marine environment for their diet. There is an abundant sea turtle population, both threatened and endangered species, that forage all along the jetty rocks consuming copious amounts of algae. Dolphins too are plentiful in the ship channel feeding on various fish populations throughout the year. Locals and visitors enjoy watching the acrobatic moves of these smart mammals.

TCEQ received Marine Seawater Desalination Diversion and Discharge Zones, a study done by the General Land Office and Texas Parks and Wildlife. The study was adopted as a guideline for placement of desalination facilities along the Texas gulf coast. According to the TCEQ Executive Director, this guideline only applies to expediated permits. However, if you talk to some of the scientists that participated in the study, they will tell you that the five major passes along the Texas coast are critical to maintaining the estuaries each supports. In fact, in the study itself, it does not mention "expedited". It is not the status of the application that matters, it is Location, Location, Location! This is plain and simple, a bad location.

It is impossible to understand how cumulative impacts are ignored and review of applications does not consider nearby facilities emissions or discharge. How is that even possible? How can what will be a minimum of 3 facilities that will have emissions and discharge not be factored into the review? There is the proposed Axis Midstream facility that will be within ½ mile of this desal plant and the Port’s crude oil export terminal, along with the possible channel deepening to 80 feet. All of this planned industry is near or at the diffuser location, yet none of projects are factored into the various “models” or as cumulative impacts that will affect the estuary.

TCEQ MISSION STATEMENT

Mission Statement: *Clean air, clean water, and safe management of waste.*

Agency Philosophy:
Base decisions on the law, common sense, sound science and fiscal responsibility.

If this philosophy was a guide, approval of this application fails common sense, sound science and fiscal responsibility.

Another point not raised (that we are aware), no worst-case-scenarios were conducted. Some of the obvious would be hurricanes, oil spills, power outages, discharge pipe and/or diffuser damage. Again, not taking all possible conditions into account is just too great a risk for this special location and certainly doesn’t meet the philosophy criteria.

When a hurricane hits, access to Harbor Island is cut off from both sides of HWY 361. Access by boat or helicopter will be the only way. There will be no water or power from the mainland. What happens to this facility when a flood of water washes over Harbor Island? What about damage to discharge pipes or diffusers

Mission Statement and Agency Philosophy

Protecting Texas by reducing and preventing pollution.

Mission Statement

The Texas Commission on Environmental Quality strives to protect our state's public health and natural resources consistent with sustainable economic development. Our goal is clean air, clean water, and the safe management of waste.

Agency Philosophy

To accomplish our mission, we will:

- base decisions on the law, common sense, sound science, and fiscal responsibility;
- ensure that regulations are necessary, effective, and current;
- apply regulations clearly and consistently;
- ensure consistent, just, and timely enforcement when environmental laws are violated;
- ensure meaningful public participation in the decision-making process;
- promote and foster voluntary compliance with environmental laws and provide flexibility in achieving environmental goals; and
- hire, develop, and retain a high-quality, diverse workforce.

from hurricanes or ships? Not one of these issues has been addressed, yet all are logical, valid concerns the POCC refuses to address.

During the recent SOAH hearing one issue became apparent, the POCC and TCEQ experts often did not agree with each other. In fact, it did not appear those doing the modeling agreed either. All the while, other factors were not considered and must be!



VLCC being docked at facility by Ingleside (from PAC video, Port Aransas in Peril)

A Very Large Crude Carrier (VLCC) is over 1000 feet long and about 160 feet wide. There will be a turning basin (no attorney or expert mentioned this) and berthing of one of these ships requires at least 5 tugboats. Positioning the VLCCs could help disperse the brine or it could send out a dense slug into the tidal flow. The point is, all this must be included in the model, but there isn't a model that considers these very real factors.

Testimonies from TCEQ and POCC experts revealed deficiencies in both the modeling input and the antidegradation review. Dr Wallace said in her deposition, "well, in hindsight" it would have been better to carry the antidegradation review further by input of other data. Just the statement "well, in hindsight" means "*we did not get it right*".

Dr. Wallace, said chemicals (for cleaning screens and scale) were not factored into the antidegradation review, because chemicals that will be used for the desalination facility are not known at this time. Dr. Wallace also stated in her deposition that many applications come across her desk, so many applications, there is not time to conduct full antidegradation reviews. Echoing the same concerning the number of applications was Katie Cunningham. In Ms. Cunningham's testimony, she has reviewed over 1,000 applications in her 33-month career with TCEQ. In other words, Ms. Cunningham reviews an average of 30.30 applications per month or 1 per day. However, assuming 24 work days / month, that equates to 1.2625 applications reviewed per day. There is no way a complicated application like the POCC's can be reviewed in a day. How adequate of a review can TCEQ give to any application?

We don't know who will actually own or operate the facility just like we don't know the types of chemicals that will be used to clean the screens and other equipment. Since the chemicals are unknown, this is not factored into the antidegradation review nor does it appear to be factored into the various dispersion models. If that information is ever made available, according to Dr. Wallace, it will likely not trigger another public notice.



Everyone that fishes here and enjoys these waters should be aware of what chemicals will be discharged into the ship channel since we consume the fish, shrimp, crab and oysters from these waters.

The iconic Polly Anna shrimp boat

We live here and observe these waters daily. We see the tides change; high, low, slack and tidal surges. We also know there can be long occurrences of lower tides or higher tides, going on for days or weeks. When tides stay lower than normal, not much mixing is going on, there is very little tidal action. Modeling failed to account for periods of excessive low/high tidal flows.

Because of the great fishing, pristine water quality and beautiful miles of beach, Port Aransas has become a number one tourist destination. Sometime in the mid-1990s Port Aransas really took off in the annual number of visitors. Prior to Hurricane Harvey Port Aransas annually saw substantial increases in sales tax. Even the “slow time” of the year stopped being slow. Some events like Sandfest can draw up to 100,000 people in a 3-day period. There is no question that Port Aransas is important to the health of local economies, including Nueces County, with an economic impact of \$243.4 million annual tourist dollars.

It is not just the fishing that draws people to Port Aransas. Surfing, shelling, birdwatching, kayaking, paddle boarding, biking, boating and swimming, just to name a few, are activities everyone can enjoy around these waters. We know what goes in the water will affect surrounding areas. “Stuff” on the beach goes to the ship channel, and what’s in the ship channel ends up on the beach. The possible impacts of this project will affect not only the fishery, but all activities enjoyed along local beaches and waterways of this area.



Sarah Searight surfing on a chilly, windy day

Sarah Searight, like many people living here, wears several hats. One of her sport passions is surfing and swimming off the beach in Port Aransas. Surfing is an addictive sport, once you're hooked the next big wave is always calling. From late spring through summer and into fall, surf camp is offered weekly, introducing people of all ages to the joys of riding the waves.

Birders literally flock (pardon the pun) to Port Aransas just to see and photograph numerous species of birds including the endangered whooping crane. Whooping cranes don't just winter at the Aransas National Wildlife Refuge, they are also around and in Port Aransas, including Harbor Island. Upon their return we observe the whoopers daily and they are already back! Blue crab is the primary diet of whooping cranes. Damage to blue crab and other crustacean populations will have a corresponding domino effect to the whooping crane population.



Whooping Crane eating crab (from PAC video, Port Aransas In Peril)

ADDITIONAL CONCERNS

The SOAH process and hearing has been interesting and revealing, while also being difficult and frustrating. The process of establishing “affected status” and contested case is, at best, confusing. All the people we know who had affected status dropped out of the ‘pro-se’ status because they found the process overwhelming and/or intimidating. This aligned group of pro-se have done our best to slug through, primarily because the people that live here should be heard first and foremost. We matter, this town matters and Redfish Bay is vital to: Port Aransas, Aransas Pass, Rockport and all the surrounding areas, including upper Corpus Christi Bay.

So many people that live here and in the surrounding communities were not aware of the desalination discharge permit WQ0005253000 or the many other proposed projects for Harbor Island by the Port of Corpus Christi. The TCEQ, the Port of Corpus Christi and many attorneys seem to think public notice published in a regional paper no one buys is adequate. They also think placing the application at La Retama Library in Corpus Christi, around 40 miles from Port Aransas, is acceptable. While it may be true the requirements for notice were met, does it make sense to place the application as far as possible from the people most affected? Port Aransas has a library and city hall, why not put the application there? Why not put the public notice in the Port Aransas South Jetty? It’s seems almost by design to keep the public most affected, uninformed.

Another concern not addressed is what will happen during a prolonged drought? Most everyone knows that when less water is reaching the bay systems there is an increase in salinity. With salinity increases comes another problem of algae blooms such as Red Tide. A recent study released in September by the Harte Research Institute showed a correlation between higher salinity levels and higher occurrences of Red Tide. Red Tide causes major fish kills and ingestion of affected fish is bad for animals and humans. We have seen kills with hundreds, sometimes thousands of fish. The aerosol effect from the Red Tide causes breathing problems, lung irritation and other eye, ear and respiratory problems. A Red Tide outbreak will not cease until flooding rains reduce salinity levels. And while the salinity levels rise from drought, a desalination plant will continue adding brine at a rate up to 110 million gallons per day.

CONCLUSION

When considering what will be the first seawater desalination facility on the Texas coast, shouldn't TCEQ "strive" to get it right the first time and not make guesses? We neither read or saw any testimonies from TCEQ or the POCC that showed ANY certainty in study conclusions. If they don't agree with each other how can we know which study, if any, is correct? And why doesn't the POCC just agree to take the discharge offshore? On several occasions POCC personnel and the TCEQ have been told, "if you just take it offshore, we will shut-up." How much time, energy and money could have been saved by just taking it offshore? What difference does it make to the POCC (about offshore) if they are not going to "own, operate or build" a plant? Many of the POCC statements fail to ring truth.

The Harte Research Institute said in a statement on November 16, 2020, "Environmental Concerns related to desalination must be addressed before any particular site is chosen." The statement can be viewed here, <https://www.hartheresearchinstitute.org/news/harte-research-institute-statement-our-desalination-science> .

Common sense tells us, we should get this one right the first time! Common sense also tells us, we will damage if not arrest the heartbeat of this breathing, living, dynamic ecosystem. If we wait until further testing is conducted after the desal facility is operating and discover larval kills, the damage is done and can't be reversed. Locating the discharge offshore, just like the intake, more problems are solved then are created. It is our responsibility to protect, not destroy this unique environment for future generations. In the end, it's the water that connects this community and draws so many annual visitors.

This aligned pro-se group of Stacey Bartlett, Jo Ellyn Krueger, Sarah Searight and Lisa Turcotte, along with the many other affected citizens, respectfully request, the application/permit WQ0005253000 be denied. We also request recommendations/changes be done to the TCEQ process to encourage public participation with real effort made to address concerns.

Respectfully submitted by Cathy Fulton.

The Pro-se Four

Stacey Barlett, Jo Ellyn Krueger, Sarah Searight, Lisa Turcotte