



UNITED FOR A HEALTHY GULF

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

RE: Comments on Draft Permit for Luke's Seafood, LLC
AI # 101615
Permit Number LA0126908
Activity Number PER20130001

Dear Public Participation Group:

The Gulf Restoration Network (GRN) respectfully submits the following comments on the draft Louisiana Pollutant Discharge Elimination System ("LPDES") permit for the Luke's Seafood, LLC Draft Water Discharge Permit ("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 the Statement of Basis, this is a new discharge into Bayou Grand Caillou. 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. The monitoring frequency for fecal coliform should be increased.

Most parameters contained within the draft permit are subject to a monthly monitoring frequency. In contrast to the other parameters, the monitoring frequency for fecal coliform is merely semiannually. In the Statement of Basis (p. 32), it states that:

"Monitoring frequencies established in LPDES permits are based on a number of factors, including but not limited to, the size of the discharge, the type of wastewater being discharged, the specific operations at the facility, past compliance history, similar facilities and best professional judgment of the reviewer."

Here, there are several factors which require consideration and which invite the conclusion that the monitoring frequency for fecal coliform should be increased. First, the facility in question discharges into Bayou Grand Caillou, which is listed in LDEQ's Final 2012 Integrated Report as not supporting one or more of its designated uses, with the suspected cause being fecal coliform. Considering that one of the designated uses of Bayou Grand Caillou is Oyster Propagation, its status on the 303(d) list due to fecal coliform is particularly alarming and the situation requires close attention. Second, the facility will be discharging treated sanitary wastewater, which may contain fecal coliform bacteria. This discharge should be monitored more frequently, as it is directly related to the impairment of the waters into which the discharge flows. Third, as the facility is new, there is no history of permit compliance which would justify such a low monitoring frequency. According to the Statement of Basis, "the Department has the authority to reduce monitoring frequencies when a permittee demonstrates two or more consecutive years of permit compliance." There is no such demonstrated compliance in this case. All of these factors support the notion that the monitoring frequency for fecal coliform should be increased.

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:
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Paul Kaspar, USEPA Region 6
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