

**TCEQ DOCKET NO. 2023-0546-MWD**

|                                      |          |                              |
|--------------------------------------|----------|------------------------------|
| <b>APPLICATION BY</b>                | <b>§</b> | <b>BEFORE THE</b>            |
| <b>GILDEN BLAIR BLACKBURN FOR</b>    | <b>§</b> | <b>TEXAS COMMISSION</b>      |
| <b>TPDES PERMIT NO. WQ0016104001</b> | <b>§</b> | <b>ON</b>                    |
|                                      | <b>§</b> | <b>ENVIRONMENTAL QUALITY</b> |

**EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS**

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this response to Hearing Requests (Response) on the application by Gilden Blair Blackburn (Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) permit No. WQ0016104001 and on the ED’s preliminary decision. The Office of the Chief Clerk received one hearing request from Mr. John Reed Clay Jr. on behalf of the Bartlett Ranch Owners (Ranch).

Attached for Commission consideration are the following:

**Attachment A—Executive Director’s Satellite Map**

**Description of Facility**

Gilden Blair Blackburn applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.020 million gallons per day (MGD). The proposed wastewater treatment facility will serve the Brock North duplexes. The Brock North Wastewater Treatment Facility will be an activated sludge process plant operated in the extended aeration mode. Treatment units include a bar screen, one aeration basin, one final clarifier, one sludge digester with a sludge holding chamber, and one chlorine contact chamber. The facility has not been constructed.

The treated effluent will be discharged to an unnamed tributary, thence to an unnamed tributary of Grindstone Creek, thence to Grindstone Creek, thence to the Brazos River Below Possum Kingdom Lake in Segment No. 1206 of the Brazos River Basin. The unclassified receiving water use is limited aquatic life use for the unnamed tributary and the unnamed tributary of Grindstone Creek and high aquatic life use for Grindstone Creek. The designated uses for Segment No. 1206 are primary contact recreation and high aquatic life use. The effluent limitations in the draft permit will maintain and protect the existing instream uses. In accordance with 30 Texas Administrative Code Section 307.5 and the TCEQ’s Procedures to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Grindstone Creek, which has been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Effluent limitations for the conventional effluent parameters (i.e., Five-Day Biochemical Oxygen Demand or Five-Day Carbonaceous Biochemical Oxygen Demand, Ammonia Nitrogen, etc.) are based on stream standards and waste load allocations for water-quality limited streams as established in the Texas Surface Water Quality Standards (TSWQS) and the State of Texas Water Quality Management Plan (WQMP).

### **Procedural Background**

TCEQ received the application on January 31, 2022, and declared it administratively complete on April 5, 2022. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI) was published in English on April 12, 2022, in the *Weatherford Democrat* and in Spanish on April 26, 2022, in *La Prensa Comunidad*. ED staff completed the technical review of the application on June 9, 2022 and prepared a draft permit. The Notice of Application and Preliminary Decision (NAPD) for TPDES Permit for Municipal Wastewater was published in English on July 9, 2022, in the *Weatherford Democrat* and in Spanish on July 12, 2022, in *La Prensa Comunidad*. The public comment period ended on August 11, 2022. This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 Texas Administrative Code (TAC) Chapter 39, 50, and 55.

### **The Evaluation Process for Hearing Requests**

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. Senate Bill 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

#### **Response to Requests**

The ED, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- 1) whether the requester is an affected person;
- 2) whether issues raised in the hearing request are disputed;
- 3) whether the dispute involves questions of fact or of law;
- 4) whether the issues were raised during the public comment period;
- 5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the ED's RTC;
- 6) whether the issues are relevant and material to the decision on the application; and
- 7) a maximum expected duration for the contested case hearing.

### **Hearing Request Requirements**

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements.

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requester prior to the filing of the ED's RTC. 30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- 1) give the time, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- 2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- 3) request a contested case hearing;
- 4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and
- 5) provide any other information specified in the public notice of application.

30 TAC § 55.201(d)

### **Requirement that Requestor be an Affected Person/ "Affected Person" Status**

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected" person. 30 TAC § 55.203 sets out who may be considered an affected person.

- 1) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.

- 2) Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.
- 3) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
  - a) whether the interest claimed is one protected by the law under which the application will be considered;
  - b) distance restrictions or other limitations imposed by law on the affected interest;
  - c) whether a reasonable relationship exists between the interest claimed and the activity regulated;
  - d) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
  - e) likely impact of the regulated activity on use of the impacted natural resource by the person;
  - f) whether the requestor timely submitted comments on the application which were not withdrawn; and
  - g) for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- 4) In making affected person determinations, the Commission may also consider, to the extent consistent with case law:
  - a) the merits of the underlying application and supporting documentation in the Commission's administrative record, including whether the application meets the requirements for permit issuance;
  - b) the analysis and opinions of the executive director; and
  - c) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

30 TAC § 55.203

### **Referral to the State Office of Administrative Hearings (SOAH)**

“When the Commission grants a request for a contested case hearing, the Commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.” 30 TAC § 50.115(b). The Commission may not refer an issue to SOAH for a contested case hearing unless the Commission determines that the issue:

- 1) involves a disputed question of fact or a mixed question of law and fact;
- 2) was raised during the public comment period by an affected person whose hearing request is granted; and
- 3) is relevant and material to the decision on the application.

30 TAC § 50.115(c).

## **Analysis of the Requests**

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify as affected persons, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

### **(A) Whether the Requestors Complied with 30 TAC §§ 55.201 (c) and (d)**

Mr. John Reed Clay submitted a timely hearing request on behalf of the Bartlett Ranch Owners in writing and provided the required contact information and raised issues relevant to a decision on the application. The hearing request raised issues of concern for the Ranch Owners such as nuisance odors, antidegradation, water quality concerns, and use and enjoyment of nearby property. The Ranch Owners state that they own property near the facility.

The Executive Director concludes that the Bartlett Ranch Owners' hearing request complies with 30 TAC § 55.201(c) and (d).

### **(B) Whether the Requestor Meet the Affected Person Requirements**

#### **1. Bartlett Ranch Owners Affected Person: No**

The Executive Director reviewed the factors found in 30 TAC § 55.203 for determining if a person is an affected person and recommends the Commission find that the Bartlett Ranch Owners are not an affected person.

On behalf of the Bartlett Ranch Owners, Mr. John Reed Clay Jr. submitted a timely hearing request in writing and provided the required contact information. The Bartlett Ranch Owners assert that they own properties within .5 mile of the Applicant's proposed facility, but the request fails to include a physical address near the proposed facility that they own. The only address provided in the hearing request is that of their Attorney, Mr. Clay, who is located over 169 miles away from the facility. The Executive Director examined the affected landowners list which accompanies permit applications, and the Bartlett Ranch Owners were not listed there as affected persons. The hearing request states the owners never received notice of the application. Mr. Clay raised issues such as antidegradation, protection of surface and groundwater, potential impairment of existing uses of the receiving waters, impacts from the discharge to aquatic and terrestrial wildlife, including cattle. The hearing request goes on to raise issues relating to operator level of the facility, potential nuisance odors, as well as regionalization. Due to the failure to identifying a physical address nearby the facility, Mr. Clay failed to show that The Ranch owners have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application that is not common to members of the general public, and they are not an affected person.

Therefore, The Executive Director recommends that the Commission find that The Bartlett Ranch Owners are not an affected person because they failed to meet the criteria set out in 30 TAC § 55.203.

### **(C) Whether Issues raised are Referable to SOAH for a Contested Case Hearing**

The Executive Director has analyzed issues in accordance with the regulatory criteria. The issues were raised by the Bartlett Ranch Owners and were not withdrawn. For applications submitted on or after September 1, 2015, only those issues raised in a timely comment by a requester whose request is granted may be referred. The Executive Director does not recommend granting the request of the Bartlett Ranch Owners to SOAH, however if the Commissioners grant the hearing request, the following issues should be considered in making that determination.

**Issue 1:** Whether the draft permit is protective of water quality including surface water, groundwater, and water wells, and uses of the receiving waters in accordance with the Texas Surface Water Quality Standards, including recreational use. (RTC Response Nos. 2, 5, and 7).

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not provide sufficient controls to protect water quality, that information would be relevant and material to a decision on the application. Should the Commissioners refer this matter to SOAH, the Executive Director recommends referring this issue to SOAH.

**Issue 2:** Whether the draft permit includes adequate provisions to protect the health of requesters and their families and aquatic and terrestrial wildlife. (RTC Response Nos. 2, 3, 6, and 8).

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not provide sufficient controls to protect human and animal life, that information would be relevant and material to a decision on the application. Should the Commissioners refer this matter to SOAH, the Executive Director recommends referring this issue to SOAH.

**Issue 3:** Whether the draft permit includes adequate licensing requirements for the operator of the facility. (RTC Response No. 5).

This is a disputed issue of fact that is relevant and material to the issuance of the draft permit. If it can be shown that the draft permit does not contain the adequate licensing requirements for the operator of the facility, that information would be relevant and material to a decision on the application. Should the Commissioners refer this matter to SOAH, the Executive Director recommends referring this issue to SOAH.

**Issue 4:** Whether the draft permit adequately addresses nuisance conditions, including odor. (RTC Response No. 4).

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not provide sufficient controls to protect nuisance odors, that information would be relevant and material to a decision on the application. Should the Commissioners refer this

matter to SOAH, the Executive Director recommends referring this issue to SOAH.

**Issue 5:** Whether the application is complete and accurate. (RTC Response No. 1).

The issue involves a disputed question of mixed fact, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit is not complete and accurate, that information would be relevant and material to a decision on the application. Should the Commissioners refer this matter to SOAH, the Executive Director recommends referring this issue to SOAH.

**Issue 6:** Whether the draft permit will impact property values and economic interests of nearby properties. (RTC Response No. 4).

This is an issue of fact. However, it is not relevant and material to a decision on the application, as TCEQ does not have jurisdiction over property values and economic interests of nearby properties. The Executive Director does NOT recommend referring this issue to SOAH.

**Issue 7:** Whether the draft permit complies with applicable antidegradation requirements. (RTC Response No. 2, 5).

The issue involves a disputed question of fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not comply with applicable antidegradation requirements, that information would be relevant and material to a decision on the application. Should the Commissioners refer this matter to SOAH, the Executive Director recommends referring this issue to SOAH.

**Issue 8:** Whether the draft permit includes adequate provisions to protect the requesters' use and enjoyment of their property. (RTC Response No. 2).

The issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not protect the requesters' use and enjoyment of their property, that information would be relevant and material to a decision on the application. Should the Commissioners refer this matter to SOAH, the Executive Director recommends referring this issue to SOAH.

**Issue 9:** Whether the draft permit should be denied or altered in consideration of the need for the facility in accordance with Texas Water Code § 26.0282, Consideration of Need and Regional Treatment Options. (RTC Response No. 9).

The issue involves a disputed question of fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not comply with Texas Water Code § 26.0282, that information would be relevant and material to a decision on the application. Should the Commissioners refer this matter to SOAH, the Executive Director recommends referring this issue to SOAH.

**Issue 10:** Whether the draft permit includes appropriate nutrient limitations. (RTC Response Nos. 4, 8).

The issue involves a disputed question of fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not contain adequate nutrient limitations, that information would be relevant and material to a decision on the application. Should the Commissioners refer this matter to SOAH, the Executive Director recommends referring this issue to SOAH.

**Issue 11:** Whether the design of the wastewater treatment plant is adequate to ensure the required effluent levels will be achieved. (RTC Response No. 8).

This is an issue of fact. However, it is not relevant and material to a decision on the application. Wastewater treatment plant design does not occur until after the issuance of a draft permit. All plant design must be approved by TCEQ Water Quality Division's Wastewater Permitting Technical Support Team prior to construction commencing. The Executive Director does NOT recommend referring this issue to SOAH.

### **Contested Case Hearing Duration**

If there is a contested case hearing on this application, the Executive Director recommends the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.

### **Conclusion**

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission find that the Bartlett Ranch Owners are not an affected person and deny their hearing request.
2. Should the Commission find that the Bartlett Ranch Owners are an affected person, the Executive Director recommends referring the following timely raised relevant and material issues to SOAH:

**Issue 1:** Whether the draft permit is protective of water quality including surface water, groundwater, and water wells, and uses of the receiving waters in accordance with the Texas Surface Water Quality Standards, including recreational use. (RTC Response Nos. 2, 5,7).

**Issue 2:** Whether the draft permit includes adequate provisions to protect the health of requesters and their families and aquatic and terrestrial wildlife. (RTC Response No. 2, 3, 6 and 8).

**Issue 3:** Whether the draft permit includes adequate licensing requirements for the operator of the facility. (RTC Response No. 5).

**Issue 4:** Whether the draft permit adequately addresses nuisance conditions, including odor. (RTC Response No. 4).

**Issue 5:** Whether the application is complete and accurate. (RTC Response No. 1).

**Issue 7:** Whether the draft permit complies with applicable antidegradation requirements. (RTC Response No. 2, 5).

**Issue 8:** Whether the draft permit includes adequate provisions to protect the requesters' use and enjoyment of their property. (RTC Response No. 2).

**Issue 9:** Whether the draft permit should be denied or altered in consideration of the need for the facility in accordance with Texas Water Code § 26.0282, Consideration of Need and Regional Treatment Options. (RTC Response No. 9).

**Issue 10:** Whether the draft permit includes appropriate nutrient limitations. (RTC Response Nos. 4, 8).

3. If referred to SOAH, first refer the matter to Alternative Dispute Resolution for a reasonable period.

Respectfully submitted,

Texas Commission on Environmental Quality

Erin E. Chancellor  
Interim Executive Director

Guy Henry, Acting Deputy Director  
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REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

### CERTIFICATE OF SERVICE

I certify that on May 22, 2023, the original of the “Executive Director’s Response to Hearing Requests” for TPDES Permit No. WQ0016104001 for Gilden Blair Blackburn and Haas Texas Incorporated was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



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Bobby Salehi  
Staff Attorney  
Environmental Law Division  
State Bar No. 24103

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Gilden Blair Blackburn  
TCEQ Docket No. 2023-0546-MWD; Permit No. WQ0016104001

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# Attachment A

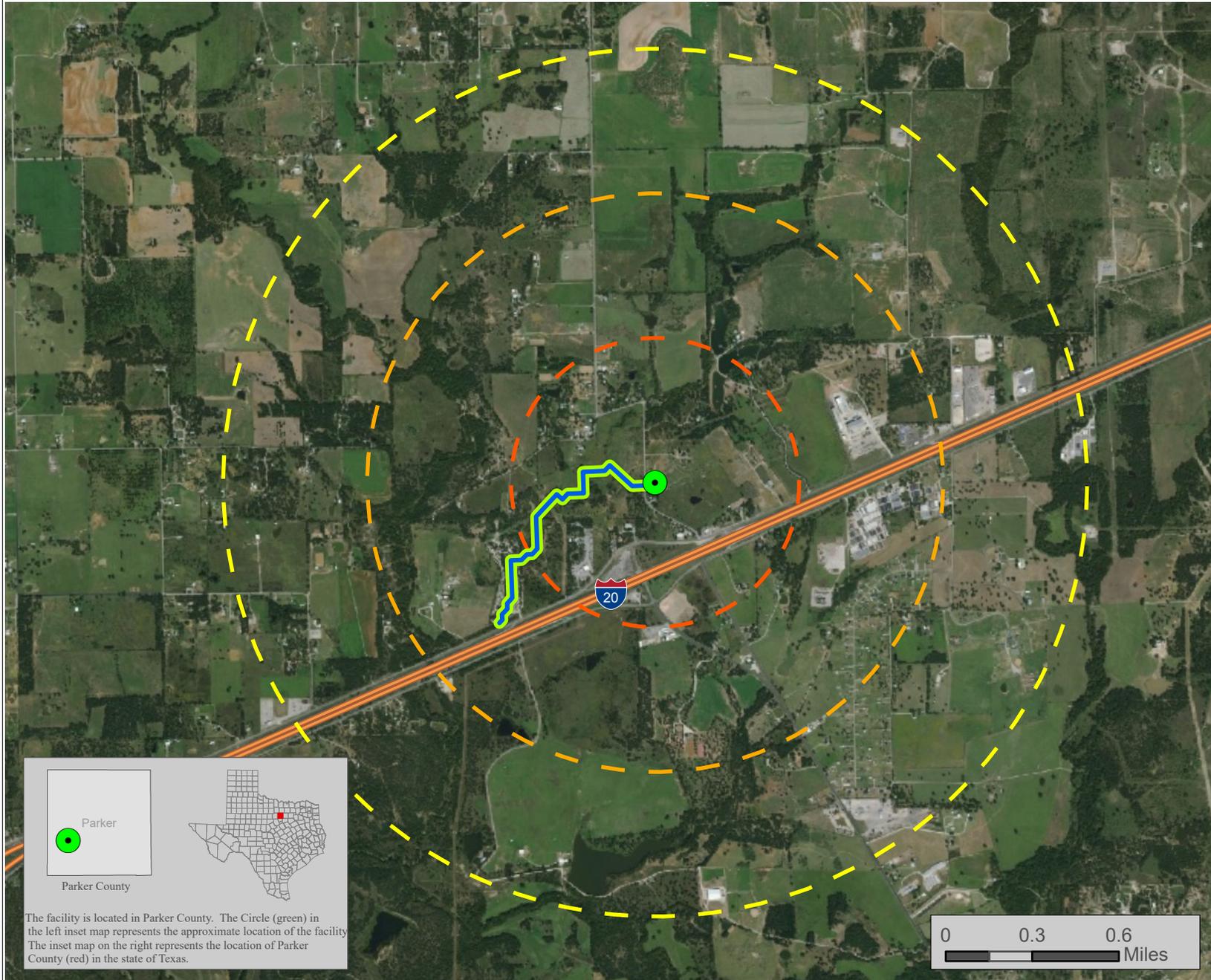
# Gilden Blair Blackburn WQ0016104001

Map Requested by TCEQ Office of Legal Services  
for Commissioners' Agenda



*Protecting Texas by  
Reducing and  
Preventing Pollution*

Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087  
Date: 1/9/2023  
CRF 0082569  
Cartographer: jbartlin



- Facility
- 0.5 Mile Radius
- 1.0 Mile Radius
- 1.5 Mile Radius
- 1 Mile Discharge

Requestor: Bartlett Ranch  
Owners

The only address provided by the requestor is that of the requestor's attorney, John Andrew Scott, and is 169.12 miles from the facility.

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



The facility is located in Parker County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Parker County (red) in the state of Texas.

