

**SOAH Docket No. 582-24-05780**

**Suffix: TCEQ**

**TCEQ Docket No. 2023-0862-MWD**

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**BEFORE THE  
STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

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**APPLICATION BY GILDEN BLAIR BLACKBURN AND  
TIMOTHY EDWARD CARTER FOR NEW  
TPDES PERMIT NO. WQ0016124001**

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**CORRECTED PROPOSED ORDER**



## **TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

### **AN ORDER GRANTING THE APPLICATION OF GILDEN BLAIR BLACKBURN AND TIMOTHY EDWARD CARTER FOR NEW TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT NO. WQ0016124001; TCEQ DOCKET NO. 2023-0862-MWD SOAH DOCKET NO. 582-24-05780**

On , the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Gilden Blair Blackburn and Timothy Edward Carter (Applicants) For New Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016124001 in Parker County, Texas. A Proposal for Decision (PFD) was issued by Administrative Law Judges (ALJs) Brent McCabe and Andrew Lutostanski at the State Office of Administrative Hearings (SOAH), who conducted an evidentiary hearing concerning the application on December 11, 2024, via Zoom videoconference.

After considering the PFD, the Commission makes the following findings of fact and conclusions of law.

## **I. FINDINGS OF FACT**

### ***Application***

1. Applicants filed their application (Application) for a new TPDES permit with the TCEQ on March 11, 2022.
2. The Application requested authorization to discharge treated domestic wastewater from a proposed new wastewater treatment facility (Facility) located approximately 1,265 feet southeast from the intersection of Brock Spur Road and Quanah Hill Road in Parker County, Texas.
3. The Facility will be a prepackaged activated sludge process plant operated in the extended aeration mode.
4. The proposed discharge route is via a man-made ditch, then to a roadside ditch, then to an unnamed tributary, then to Price Lake, then to an unnamed tributary, then to an unnamed pond, then to an unnamed tributary, then to Grindstone Creek, then to the Brazos River below Possum Kingdom Lake in Segment No. 1206 of the Brazos River Basin.
5. The Application requests authorization to treat and discharge treated domestic wastewater from the proposed facility at a daily average flow not to exceed 37,500 gallons per day (GPD) in the interim phase and 75,000 GPD in the final phase.
6. The Executive Director (ED) of the TCEQ declared the Application administratively complete on June 7, 2022.

### ***Draft Permit***

7. The ED completed the technical review of the Application, prepared a draft permit (Original Draft Permit), and made it available for public review and comment.
8. During the contested-case proceeding, on April 25, 2024, the ED issued changes to the effluent limits in the Original Draft Permit with certain further

revisions on October 15, 2024 (together with the Original Draft Permit and April 2024 changes, Final Draft Permit).

9. The effluent limits changes were the result of updated water quality modeling from the Commission's Water Quality Assessment team.
10. The Final Draft Permit provides for two phases, an interim phase and a final phase.
11. During the interim phase, which extends through completion of the expansion to the 0.075 million gallons per day (MGD) facility, the daily average flow of effluent shall not exceed 0.0375 MGD, and average discharge during any two-hour period may not exceed 104 gallons per minute.
12. The Final Draft Permit contains the following effluent limits for the interim phase:
  - Five-day carbonaceous biochemical oxygen demand (CBOD5) – 10 milligrams per liter (mg/L);
  - Total suspended solids (TSS) – 15 mg/L;
  - Ammonia nitrogen (NH<sub>3</sub>-N) – 3 mg/L; and
  - *E. coli* – 126 colony forming units (CFU) or most probable number (MPN) per 100 ml.
13. For the final phase, the daily average flow of effluent shall not exceed 0.075 MGD, and average discharge during any two-hour period may not exceed 208 gallons per minute.
14. The Final Draft Permit contains the following effluent limits for the final phase:
  - CBOD5 – 10 mg/L;
  - TSS – 15 mg/L;
  - NH<sub>3</sub>-N – 2 mg/L; and
  - *E. coli* – 126 CFU or MPN per 100 ml.

15. In both the interim and final phases, the effluent shall contain a chlorine residual of at least 1.0 mg/L and shall not exceed a chlorine residual of 4.0 mg/L after a detention time of at least 20 minutes.
16. For both phases, the pH must be in the range of 6.0 to 9.0 standard units.
17. For both phases, the effluent shall contain a minimum dissolved oxygen (DO) of 4.0 mg/L and shall be monitored once per week by grab sample.
18. A Tier 1 antidegradation review determined that existing water quality uses will not be impaired by this permit action, and numerical and narrative criteria to protect existing uses will be maintained.
19. A Tier 2 review determined that no significant degradation of water quality is expected in Price Lake or Grindstone Creek, and existing uses will be maintained and protected.

### ***Notice and Jurisdiction***

20. The Notice of Receipt of the Application and Intent to Obtain a Water Quality Permit (NORI) was published in English on June 14, 2022, in the *Weatherford Democrat*, and in Spanish on June 14, 2022, in the *La Prensa Comunidad*.
21. A Notice of Application and Preliminary Decision (NAPD) was published in English on September 13, 2022, in the *Weatherford Democrat*, and in Spanish on September 13, 2022, in the *La Prensa Comunidad*.
22. Applicants maintained an administratively complete Application in the Weatherford City Hall, in Parker County, for public viewing.
23. FM 1189 LLC, Bartlett Ranch Brock LLC, Series A EGHB Investments LLC, and Series A 1189 Storage LLC (collectively, Protestants) submitted public comment and requests for hearing on January 13, 2023. Protestants filed request for reconsideration and request for hearing on May 10, 2023.
24. The comment period for the Application closed on January 13, 2023.
25. The ED issued her Response to Hearing Requests on September 1, 2023.

26. On January 9, 2024, the notice of the preliminary hearing was published in English in the *Weatherford Democrat*. The notice included the time, date, and place of the hearing, as well as the matters asserted, in accordance with the applicable statutes and rules.

### ***SOAH Proceedings***

27. On October 2, 2023, and after considering requests for a hearing and reconsideration, the Commission issued an interim order (Interim Order) referring five issues to SOAH for a contested-case hearing and determining that Protestants were affected persons.
28. The Interim Order referred the following issues:
- A. Whether the draft permit is adequately protective of water quality, including the protection of surface water, groundwater, aquatic life, livestock, and wildlife, in accordance with applicable regulations including the Texas Surface Water Quality Standards;
  - B. Whether the draft permit is protective of the health of the requesters, their families, and other individuals who reside in the immediate vicinity of the proposed Facility and discharge route;
  - C. Whether the draft permit adequately protects against nuisance odors in accordance with 30 TAC § 309.13(e);
  - D. Whether the Commission should deny or alter the terms and conditions of the draft permit based on consideration of need under TWC § 26.0282; and
  - E. Whether the antidegradation review complies with applicable regulations and the draft permit includes adequate nutrient limits.
29. On February 15, 2024, ALJ Brent McCabe convened a preliminary hearing via Zoom videoconference. Applicants, Protestants, the ED, and the Office of Public Interest Counsel (OPIC) were named parties.
30. At the preliminary hearing, ALJ McCabe admitted the administrative record and supplemental administrative record, and determined that SOAH had jurisdiction over the matter. Throughout the contested-case proceeding, the

first, second, and third supplemental administrative records were admitted into the record of the proceeding.

31. On December 11, 2024, following multiple continuances, ALJs Brent McCabe and Andrew Lutostanski convened the hearing on the merits in the SOAH hybrid hearing room and via Zoom videoconference. Attorney Peter Gregg appeared for Applicants. Attorney Andrew Scott appeared for Protestants. Attorney Aubrey Pawelka appeared for the ED, and Attorney Sheldon Wayne appeared for OPIC.
32. The hearing was transcribed by Certified Shorthand Reporter Della Duett. By order, the record closed with the filing of post-hearing briefs on January 21, 2025.

***Issue A: Whether the draft permit is adequately protective of water quality, including the protection of surface water, groundwater, aquatic life, livestock, and wildlife, in accordance with applicable regulations including the Texas Surface Water Quality Standards***

33. In April 2024, TCEQ's water quality assessment team performed revised modeling on the discharge route at least in part in response to concerns raised by Protestants.
34. The original water quality modeling was performed using an uncalibrated QUAL-TX model.
35. The revised modeling used an uncalibrated QUAL-TX model for the upper reaches of the discharge route through the backwater of Price Lake. A continually-stirred tank reactor (CSTR) model was used for the remainder of Price Lake.
36. The QUAL-TX model used default hydraulic coefficients.
37. Use of the default hydraulic coefficients is consistent with the TCEQ water quality assessment team's Standard Operating Procedures (SOPs) when no site-specific data is available.

38. No site-specific data was available for the man-made ditch, roadside ditch, unnamed tributary, or Price Lake backwater in the upper reaches of the discharge route.
39. The revised modeling appropriately used the default hydraulic coefficients for these portions of the discharge route.
40. Pursuant to the SOPs, a CSTR model is appropriate for significant ponds, lakes, reservoirs, and portions of larger open water bodies, like bays.
41. Price Lake and its side bay are a larger open water body.
42. The revised modeling appropriately used a CSTR model for the area of Price Lake outside of the backwater reach.
43. The revised QUAL-TX modeling used a default element length of 0.1 km for the man-made ditch, roadside ditch, and unnamed tributary.
44. The use of default element length was appropriate under the SOPs.
45. Shortening the element length for the man-made ditch or unnamed tributary in the revised modeling would not likely predict DO concentration sags below the necessary minimum of 2.0 mg/L for the man-made ditch, roadside ditch, and unnamed tributary.
46. In the revised modeling, a shortened element length of 0.0425 km was used for the Price Lake backwater reach.
47. This shortening of the element length in this area was appropriate because the Price Lake backwater is a critical area where predicted DO concentrations are closest to the minimum threshold for DO concentration in Price Lake, which is 5.0 mg/L.
48. Shortening the element length was appropriate because it increased the sensitivity to DO concentration sags in this critical area.
49. The shortening of this element length in part led to the revision of the draft permit and resulting effluent limits of the Final Draft Permit.



50. The QUAL-TX computer model used for the revised modeling may have had a programming bug that affected the results of the modeling. However, the effect was negligible and did not require further revision of the draft permit.
51. The TCEQ's revised modeling was appropriately performed and demonstrates that the limits in the Final Draft Permit will be protective of water quality.

***Issue B: Whether the draft permit is protective of the health of the requesters, their families, and other individuals who reside in the immediate vicinity of the proposed Facility and discharge route***

52. No party presented evidence rebutting the prima facie demonstration that the Final Draft Permit is protective of the health of the Protestants, their families, or individuals residing in the immediate vicinity of the Facility or discharge route.
53. The Final Draft Permit is protective of these individuals' health.

***Issue C: Whether the draft permit adequately protects against nuisance odors in accordance with 30 TAC§ 309.13(e)***

54. No party presented evidence rebutting the prima facie demonstration that the Final Draft Permit adequately protects against nuisance odors.
55. The Final Draft Permit adequately protects against nuisance odors.

***Issue D: Whether the Commission should deny or alter the terms and conditions of the draft permit based on consideration of need under TWC § 26.0282***

56. No party presented evidence rebutting the prima facie demonstration that the Application complies with TCEQ's policy on regionalization.
57. Regionalization was properly considered when the Application was reviewed and the Final Draft Permit was prepared.
58. The policy of regionalization does not provide a basis for denying the Application or altering the terms and conditions of the Final Draft Permit.

***Issue E: Whether the antidegradation review complies with applicable regulations and the draft permit includes adequate nutrient limits.***

- 59. No party presented evidence rebutting the prima facie demonstration that the antidegradation review complies with applicable regulations and the Final Draft Permit includes adequate nutrients limits.
- 60. The antidegradation review complies with applicable regulations.
- 61. The Final Draft Permit includes adequate nutrient limits.

***Transcript Costs***

- 62. Reporting and transcription of the hearing on the merits was warranted.
- 63. All parties fully participated in the hearing by presenting witnesses and cross-examining witnesses.
- 64. All parties benefitted from preparation of a transcript.
- 65. There was no evidence that any party subject to allocation of costs is financially unable to pay a share of the costs.
- 66. Transcript costs cannot be assessed against the ED or OPIC because they are statutory parties who are precluded from appealing the decision of the Commission.
- 67. Applicants and Protestants should bear their own transcript costs.

**II. CONCLUSIONS OF LAW**

- 1. TCEQ has jurisdiction over this matter. Tex. Water Code chs. 5, 26.
- 2. SOAH has jurisdiction to conduct a hearing and to prepare a PFD in contested cases referred by the Commission under Texas Government Code § 2003.047.

3. Notice was provided in accordance with Texas Water Code §§ 5.114, 26.028; Texas Government Code §§ 2001.051-.052; and 30 Texas Administrative Code §§ 39.405 and .551.
4. The Application is subject to the requirements in Senate Bill 709, effective September 1, 2015. Tex. Gov't Code § 2003.047(i-1)-(i-3).
5. Applicants' filing of the Administrative Record established a prima facie case that: (1) the Final Draft Permit meets all state and federal legal and technical requirements; and (2) a permit, if issued consistent with the Final Draft Permit, would protect human health and safety, the environment, and physical property. Tex. Gov't Code § 2003.047(i-1); 30 Tex. Admin. Code §§ 80.17(c)(1), .117(c)(1), .127(h).
6. To rebut the prima facie demonstration established by the Administrative Record, a party must present evidence that (1) relates to the matter directly referred; and (2) demonstrates that one or more provisions in the Final Draft Permit violates a specifically applicable state or federal requirement. *See* Tex. Gov't Code § 2003.047(i-2); 30 Tex. Admin. Code §§ 80.17(c)(2), .117(c)(3).
7. If a party rebuts the prima facie demonstration, the Applicants and the ED may present additional evidence to support the Final Draft Permit. Tex. Gov't Code § 2003.047(i-3); 30 Tex. Admin. Code §§ 80.17(c)(3), .117(c)(3).
8. Applicants retain the burden of proof on the issues that the Final Draft Permit is protective of human health and safety, the environment, and physical property, and complies with the necessary statutory and regulatory requirements. 30 Tex. Admin. Code § 80.17(a).
9. Texas Water Code § 26.0282 requires the TCEQ to consider regionalization and allows the TCEQ to deny a permit or alter its terms "based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems."
10. No party rebutted the prima facie demonstration. Tex. Gov't Code § 2003.047(i-2); 30 Tex. Admin. Code § 80.117(c).

11. The Final Draft Permit is adequately protective of water quality, including the protection of surface water, groundwater, and animals in accordance with applicable regulations.
12. The Final Draft Permit is protective of human health and safety, the environment, and physical property, relating to the discharge of emerging contaminants in the effluent.
13. No transcript costs may be assessed against the ED or OPIC because the TCEQ's rules prohibit the assessment of any cost to a statutory party who is precluded by law from appealing any ruling, decision, or other act of the Commission. 30 Tex. Admin. Code § 80.23(d)(2).
14. Factors to be considered in assessing transcript costs include: the party who requested the transcript; the financial ability of the party to pay the costs; the extent to which the party participated in the hearing; the relative benefits to the various parties of having a transcript; the budgetary constraints of a state or federal administrative agency participating in the proceeding; and any other factor which is relevant to a just and reasonable assessment of the costs. 30 Tex. Admin. Code § 80.23(d)(1).
15. Considering the factors in 30 Texas Administrative Code § 80.23(d)(1), a reasonable assessment of hearing transcript costs is for each party to bear its own costs.

**NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:**

1. Applicants' application for a new Texas Pollutant Discharge Elimination System Permit No. WQ0016124001 is granted as set forth in the Final Draft Permit.
2. Applicants and Protestants shall bear their own transcription costs.
3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted, are denied.

4. The TCEQ's Chief Clerk shall forward a copy of this Order and attached Final Draft Permit to all parties and, subject to the filing of motions for rehearing, issue the attached Final Draft Permit.
5. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.
6. The effective date of this Order is the date the Order is final as provided by 30 Texas Administrative Code § 80.273 and Texas Government Code § 2001.144.

**ISSUED:**

**TEXAS COMMISSION ON ENVIRONMENTAL  
QUALITY**

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**Brooke T. Paup, Chairman for the Commission**