

DOCKET NO. 2023-0862-MWD

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

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

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I. Introduction

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Request (Response) on the application by Gilden Blair Blackburn and Timothy Edward Carter (Applicants) seeking a new Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0016124001 and the Executive Director's preliminary decision. The Office of the Chief Clerk received a contested case hearing request from John Andrew Scott on behalf of FM 1189 LLC, Bartlett Ranch Brock LLC, Series A EGHB Investments LLC, and Series A 1189 Storage LLC (collectively, "FM 1189").

II. Description of Facility

Gilden Blair Blackburn and Timothy Edward Carter applied for a new TPDES Permit No. WQ0016124001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day.

The WWTF will be located approximately 1,265 feet southeast from the intersection of Brock Spur Road and Quannah Hill Road, in Parker County, Texas 76087. The treated effluent will be discharged via a man-made ditch, thence to a roadside ditch, thence to an unnamed tributary, thence to Price Lake, thence to an unnamed tributary, thence to an unnamed pond, thence to an unnamed tributary, thence to Grindstone Creek, thence to the Brazos River Below Possum Kingdom Lake in Segment No. 1206 of the Brazos River Basin.

The WWTF will be prepackaged activated sludge process plant operated in the extended aeration mode. Treatment units in the Interim phase will include a bar screen, an aeration basin, a final clarifier, a sludge holding chamber, a sludge digester, and a chlorine contact chamber. Treatment units in the Final phase will include an additional treatment train identical to the Interim phase. Effluent will flow through one equalization basin before entering either treatment train. The facility has not been constructed.

The draft permit authorizes a discharge of treated domestic wastewater at an Interim volume not to exceed a daily average flow of 0.075 MGD.

The effluent limitations in the Interim phase of the draft permit, based on a 30-day average, are 20 mg/l five-day carbonaceous biochemical oxygen demand (CBOD<sub>5</sub>), 20 mg/l total suspended solids (TSS), 126 colony forming units (CFU) or most probable number (MPN) of *Escherichia coli* (*E. coli*) per 100 ml, and 2.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a total chlorine residual of at least

1.0 mg/l and shall not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The effluent limitations in the Final phase of the draft permit, based on a 30-day average, are 10 mg/l five-day CBOD<sub>5</sub>, 15 mg/l TSS, 3 mg/l ammoniacal nitrogen (NH<sub>3</sub>-N), 126 CFU or MPN of *E. coli* per 100 ml and 4.0 mg/l minimum DO. The effluent shall contain a total chlorine residual of at least 1.0 mg/l and shall not exceed a total chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

### III. Procedural Background

The permit application was received on March 11, 2022, and declared administratively complete on June 7, 2022. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English in the *Weatherford Democrat* on June 14, 2022, and in Spanish in the *La Presna Comunidad* on June 14, 2022. The ED completed the technical review of the application on July 27, 2022. A Notice of Application and Preliminary Decision (NAPD) was published in English in the *Weatherford Democrat* on September 13, 2022, and in Spanish in the *La Presna Comunidad* on September 13, 2022. The public comment period ended on January 13, 2023.

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 TAC Chapters 39, 50, and 55. This application is subject to those changes in the law.

### IV. 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:

#### A. Response to Requests

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to hearing requests. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- whether the requestor is an affected person;
- which issues raised in the hearing request are disputed;
- whether the dispute involves questions of fact or of law;
- whether the issues were raised during the public comment period;

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 Executive Director's Response to Comment;

whether the issues are relevant and material to the decision on the application; and

a maximum expected duration for the contested case hearing.

30 TAC § 55.209(c).

#### B. 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 requestor prior to the filing of the Executive Director's Response to Comment.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

give the name, 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;

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;

request a contested case hearing; and

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 provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

### C. 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. 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. 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.

In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

- whether the interest claimed is one protected by the law under which the application will be considered;

- distance restrictions or other limitations imposed by law on the affected interest;

- whether a reasonable relationship exists between the interest claimed and the activity regulated;

- likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

- likely impact of the regulated activity on use of the impacted natural resource by the person;

- whether the requestor timely submitted comments on the application which were not withdrawn; and

- for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203.

In making affected person determinations, the commission may also consider, to the extent consistent with case law:

- 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;

- the analysis and opinions of the Executive Director; and

- any other expert reports, affidavits, opinions, or data submitted by the Executive Director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

### D. Referral to the State Office of Administrative Hearings

“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:

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

30 TAC § 50.115(c).

## V. Analysis of Hearing Requests

The Executive Director has analyzed the hearing request to determine whether it complies with Commission rules, if the requestor qualifies as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

### A. **Whether the Hearing Requests Complied with Section 55.201(c) and (d).**

John Andrew Scott submitted a timely hearing request on behalf of FM 1189 LLC, Bartlett Ranch Brock LLC, Series A EGHB Investments LLC, and Series A 1189 Storage LLC (collectively, "FM 1189"). The hearing request complied with 30 TAC § 55.201(c). Mr. Scott included his name, address, and telephone number in his hearing request. Mr. Scott identified FM 1189's personal justiciable interest affected by the application, stating that FM 1189 owns property near the facility.

The Executive Director concludes that John Andrew Scott submitted a hearing request that complies with 30 TAC § 55.201(c) and (d).

### B. **Whether the Requestor Meets the Affected Person Requirements.**

#### **FM 1189**

According to the information provided by John Andrew Scott, FM 1189 owns property within ¼ mile of the facility, but the request fails to provide a physical address near the proposed facility that it claims to own. The only physical address provided in the hearing request is that of the Attorney Mr. Scott, over 150 miles away from the proposed facility. In addition, the entities included in FM 1189 are not included in the affected landowners list for this application. Mr. Scott 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 livestock. 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 identify a physical address near the facility, the request failed to show that the FM 1189 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.

The Executive Director recommends the Commission find that FM 1189 is not an affected person.

### **C. Whether Issues Raised Are Referable to SOAH for a Contested Case.**

The Executive Director has analyzed the issues in accordance with the regulatory criteria. The issues were raised by FM 1189 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 FM 1189 to SOAH, however, if the Commissioners grant the hearing request, the following issues should be considered in making that determination.

**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. 1, 4, 5-6).**

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.

**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, 5).**

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.

**3. Whether the draft permit adequately addresses nuisance conditions, including odor. (RTC Response No. 3).**

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 address 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.

**4. Whether the draft permit includes adequate provisions to protect the requesters' use and enjoyment of their property. (RTC Response No. 1).**

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.

**5. 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. 7).**

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.

**6. Whether the draft permit includes appropriate nutrient limitations. (RTC Response No. 3).**

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.

## VI. Analysis of Request for Reconsideration

The Chief Clerk received a timely Request for Reconsideration (RFR) from John Andrew Scott on behalf of FM 1189. As required by 30 Texas Administrative Code § 55.201(e), Mr. Scott gave his request in writing, and provided his name, address, and daytime telephone number. Mr. Scott specifically requested reconsideration of the ED's decision on the Gilden Blair Blackburn and Timothy Edward Carter application.

The issues brought up by FM 1189 included water quality (RTC Response Nos. 1, 4, 5-6), human health (RTC Response No. 5), impact to aquatic and animal life (RTC Response No. 1), regionalization (RTC Response No. 7), nuisance odor (RTC Response 3), application completeness, antidegradation, design of the WWTP, and whether the facility operator is qualified.

These issues, to the extent they are within the Commission's jurisdiction to consider on a TPDES application, were considered during the ED's review of the application. The RFR did not provide any new information that would lead the ED to change his recommendation on the application, therefore, the ED recommends denial of the RFR.

## VII. Contested Case Hearing Duration

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

VIII. Conclusion

The Executive Director recommends the following actions by the Commission:  
Find FM 1189 not an affected person and deny its hearing request.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel  
Interim Executive Director

Charmaine Backens, Deputy Director  
Environmental Law Division



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REPRESENTING THE EXECUTIVE DIRECTOR OF  
THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

IX. CERTIFICATE OF SERVICE

I certify that on September 1, 2023, the “Executive Director’s Response to Hearing Requests” for new Texas Pollutant Discharge Elimination System (TPDES) No. WQ0016124001 by Gilden Blair Blackburn and Timothy Edward Carter 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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TPDES Permit No./TPDES Permiso N.º WQ0016124001

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