

**TCEQ DOCKET NO. 2024-0414-MWD**

<b>APPLICATION BY BL 12 HOLDINGS, LLC FOR NEW TEXAS POLLUTION DISCHARGE ELIMINATION SYSTEM PERMIT NO. WQ0016297001</b>	§ § § §	<b>BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY</b>
--	------------------	---

**BL 12 HOLDINGS, LLC’S RESPONSE TO HEARING REQUEST**

TO THE HONORABLE COMMISSIONERS:

COMES NOW, Applicant BL 12 Holdings, LLC (Applicant) and files this Response to Hearing Request relating to the issuance of proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016297001, and would respectfully show the following:

**I. SUMMARY OF RESPONSE**

The Texas Commission on Environmental Quality (TCEQ or Commission) received a single timely hearing request from the San Marcos River Foundation (SMRF).<sup>1</sup> As explained more fully below, SMRF is not an affected person since it lacks associational or group standing. The TCEQ should deny its hearing request and remand the Application to the Executive Director (ED) for issuance of the permit on her non-contested docket.

**II. BACKGROUND**

Applicant seeks authorization to discharge domestic wastewater from a “minor” wastewater treatment plant (WWTP) that will serve single family homes in the JK Ranch residential development located near the intersection of Political Road and the San Marcos Highway in Caldwell County, Texas. The proposed TPDES permit would allow a daily average flow of 0.15 million gallons per day (MGD) in the Interim I phase, 0.40 MGD in Interim II phase and 0.85 MGD in the Final phase. The Draft Permit proposes effluent limitations in all phases of 5 mg/L carbonaceous biochemical oxygen demand five-day (CBOD<sub>5</sub>), 12 mg/L total suspended solids (TSS), 2 mg/L ammonia-nitrogen (NH<sub>3</sub>-N), 1.0 mg/L total phosphorus (TP), 126 colony

---

<sup>1</sup> SMRF’s November 8, 2023 hearing request was filed on behalf of SMRF by the Save Our Springs Alliance (SOS). SMRF Executive Director Virginia Parker provided written and oral comments at the August 29, 2023 Public Meeting.

forming units (CFU) of *E. coli* per 100 ml, and 4.0 mg/L minimum dissolved oxygen (DO),<sup>2</sup> which is considered enhanced secondary treatment with nitrification and additional phosphorus removal.

According to ED, these limits comply with the Texas Surface Water Quality Standards (TSWQS) and the State of Texas Water Quality Management Plan (WQMP). The proposed discharge will not impair existing water quality, which the ED's staff confirmed through a Tier 1 antidegradation review.<sup>3</sup> Treated effluent will be discharged to Callihan Creek, then to Lower San Marcos River in Segment No. 1808 of the Guadalupe River Basin which is not currently listed as an impaired or threatened waterbody on the section 303(d) list. The ED's Standards' review determined that the discharge from the proposed permit action is not expected to affect any federal endangered or threatened aquatic or aquatic-dependent species.<sup>4</sup> In all technical respects, the proposed amendment complies with all Commission rules and policy.

### **III. AUTHORITY**

To be granted, an "affected person" with a personal justiciable interest demonstrating a non-speculative injury resulting from the granting of the permit must make the request for hearing. The test for associational or group standing for SMRF is different from individuals or governmental entities and is set forth in Title 30 Tex. Admin. Code (TAC) § 55.205:

- (a) A group or association may request a contested case hearing only if the group or association meets all of the following requirements:
  - (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
  - (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
  - (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.
- (b) For applications filed on or after September 1, 2015, a request by a group or association for a contested case may not be granted unless all of the following requirements are met:

---

<sup>2</sup> Statement of Basis/Technical Summary and Executive Director's Preliminary Decision at 3 (April 28, 2023) (Technical Summary). The Draft Permit adds a requirement for dischlorination in the Final phase.

<sup>3</sup> *Id.* at 2. Also, a Tier 2 antidegradation review was not performed because no exceptional, high or intermediate aquatic life uses were identified in the receiving streams therefore no significant degradation of water quality is expected and existing uses will be maintained and protected.

<sup>4</sup> *Id.*

- (1) comments on the application are timely submitted by the group or association;
- (2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
- (3) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (4) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.<sup>5</sup>

The SMRF member (or members) who must have standing to request a hearing in his own right is assessed under the 30 TAC § 55.203 standing criteria for individual requestors:

- (a) 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.
- (b) Except as provided by §55.103 of this title (relating to Definitions), governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
  - (1) whether the interest claimed is one protected by the law under which the application will be considered;
  - (2) distance restrictions or other limitations imposed by law on the affected interest;
  - (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
  - (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
  - (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
  - (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
  - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- (d) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the commission may also consider the following:
  - (1) 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;

---

<sup>5</sup> 30 TAC § 55.205(a), (b).

- (2) the analysis and opinions of the executive director; and
  - (3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.
- (e) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed before September 1, 2015, the commission may also consider the factors in subsection (d) of this section to the extent consistent with case law.<sup>6</sup>

#### **IV. RESPONSE TO SMRF'S HEARING REQUEST**

SMRF filed its single hearing request on November 8, 2023. In its request, SMRF states that it meets the requirements to be considered an affected person because its member Joe Banda has standing in his own right. Applicant does not dispute the Mr. Banda lives within a mile of the proposed discharge.

However, fundamental to a finding of associational standing under 30 TAC § 55.205(b)(2), is that Mr. Banda must be a member of SMRF at the time the hearing request was submitted and continuing thereafter. SMRF has provided no evidence that Mr. Banda is a SMRF member, that he paid a membership fee and officially become a member of the organization. On the contrary, Mr. Banda's TCEQ Registration Form filled out and collected at the August 29, 2023 Public Meeting depicts completely different handwriting than the comment letter which expounds on issues of concerns.<sup>7</sup> The two, 1-page documents appear to be filled out by entirely different individuals.

Additionally, Mr. Banda gave official oral comment during that portion of the public meeting recorded by TCEQ's Office of Chief Clerk. Mr. Banda was the last speaker (of five) and spoke for approximately one minute on only the potential effect of "dirty water" on his cattle, property values and flooding. His oral comments bear no reasonable relationship to the many specific technical-based comments in the comment letter. These issues are very clearly SMRF's issues – because it raises them time and time again in other contested TPDES permit proceedings – but not Mr. Banda's.

---

<sup>6</sup> 30 TAC § 55.203.

<sup>7</sup> See **Exhibit A**, Joe Banda TCEQ registration form and separate comment letter.

Even stranger, the list of concerns on the comment letter is not signed by Mr. Banda. It merely provides his name, address and phone number at the top of the page near TCEQ's time stamp. Oddly, the name "Virginia" appears on the far right side of the 1-page letter by itself, disassociated with any comment. Virginia is the first name of the Executive Director of SMRF, Virginia Parker.

The clear takeaway here is that Mr. Banda is not a member of SMRF, he did not write the comment letter submitted with his registration form and he does not share the same concerns as SMRF, despite the self-serving statements to the contrary on the questionable Exhibit A comment letter. The State's TPDES delegation agreement with EPA on public participation does **not** envision that any environmental organization can merely claim any person as a member in order to clear the standing hurdle in a contested hearing process. If group membership is not supported by competent evidence, 30 TAC § 55.205 is rendered meaningless.

Under 30 TAC § 55.205(c), the ED, OPIC or Applicant may request that SMRF provide an explanation of how it meets the required group or associational standing test.<sup>8</sup> Therefore, unless SMRF can provide competent evidence demonstrating that Mr. Banda was a member of SMRF at the time it submitted its hearing request and continues through present, it lacks a justiciable interest as an affected person in this docket and fails to prove its associational standing. TCEQ should deny SMRF's hearing request.

## **V. RELEVANT AND MATERIAL ISSUES FOR REFERRAL**

If the TCEQ finds there is actual proof of Mr. Banda's membership in SMRF and SMRF is an affected party, Applicant has no objection to the referral of these issues to SOAH for hearing:

- A. Whether the draft permit is adequately protective of water quality, including the protection of surface water in accordance with applicable regulations including the Texas Surface Water Quality Standards (TSWQS);
- B. Whether the draft permit adequately addresses nuisance odor in accordance with 30 TAC § 309.13; and
- C. Whether the application was properly noticed.

---

<sup>8</sup> 30 TAC § 55.205(c).

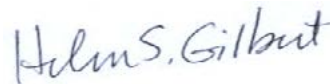
Applicant does not believe it is necessary to refer separate issues on compliance with antidegradation requirements and the protection of human health, since these issues are already addressed under the first referred issue, compliance with the TSWQS, 30 TAC chapter 307. Chapter 307 includes antidegradation and the protection of human health as embodied in the TSWQS and the draft permit's effluent limits.

Also, SMRF's issue on odor creates a new legal standard that departs from prior Commission precedent that should not be referred as drafted. TCEQ rules do not require the *prevention* of odors, but the abatement and control of odors in accordance with 30 TAC § 309.13(e). Referring amorphous issues without basis in TCEQ rules creates a confusing hearing process for the Administrative Law Judge and parties and ultimately confuses the administrative record that is developed.

## VI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Applicant BL 12 Holdings, LLC respectfully prays that the Commission deny the hearing request of SMRF and remand the uncontested permit to the ED for issuance; but if it grants SMRF's hearing request, refer the case only on the three issues identified in Section V above for no longer than 180 days.

Respectfully submitted,



By: \_\_\_\_\_

Helen S. Gilbert  
State Bar No. 00786263  
Randall B. Wilburn  
State Bar No. 24033342  
BARTON BENSON JONES, PLLC  
7000 N. MoPac Expwy, Suite 200  
Austin, Texas 78731  
Telephone: (512) 565-4995  
Telecopier: (210) 600-9796  
[hgilbert@bartonbensonjones.com](mailto:hgilbert@bartonbensonjones.com)  
[rwilburn@bartonbensonjones.com](mailto:rwilburn@bartonbensonjones.com)

**ATTORNEYS FOR BL 12 HOLDINGS,  
LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, or Certified Mail Return Receipt Requested on all parties on this 18th day of March 2024:

Mr. Garrett Arthur  
Public Interest Counsel  
Office of the Public Interest Counsel  
TCEQ-MC 103  
P.O. Box 13087  
Austin, TX 78711-3087  
[Garrett.Arthur@tceq.texas.gov](mailto:Garrett.Arthur@tceq.texas.gov)

Ms. Laurie Gharis, Chief Clerk  
Office of Chief Clerk  
TCEQ-MC 105  
P.O. Box 13087  
Austin, TX 78711-3087  
[Chiefclerk@tceq.texas.gov](mailto:Chiefclerk@tceq.texas.gov)

Ms. Aubrey Pawelka, Staff Attorney  
Office of Legal Services  
TCEQ-MC 173  
P.O. Box 13087  
Austin, TX 78711-3087  
[Aubrey.Pawelka@tceq.texas.gov](mailto:Aubrey.Pawelka@tceq.texas.gov)

Mr. Joe Banda  
120 Honey's Trail  
Fentress, TX 78622

Ms. Victoria Rose  
Save Our Springs Alliance  
4701 W Gate Blvd, Suite D401  
Austin, TX 78745-1479  
[victoria@sosalliance.org](mailto:victoria@sosalliance.org)

*Helen S. Gilbert*

By: \_\_\_\_\_  
Helen S. Gilbert

# TCEQ Registration Form

August 29, 2023

## BL 12 Holdings LLC PROPOSED WATER QUALITY PERMIT WQ0016297001

PLEASE PRINT

Name: JOE BANDA

Mailing Address: PO Box 57

Physical Address (if different): 120 Honey's TRAIL

City/State: Fentress, Tx. 78672 Zip: \_\_\_\_\_

*\*\*This information is subject to public disclosure under the Texas Public Information Act\*\**

Email: \_\_\_\_\_

Phone Number: ( 512 ) 203 0292

- Are you here today representing a municipality, legislator, agency, or group?  Yes  No

If yes, which one? \_\_\_\_\_

Please add me to the mailing list.

I wish to provide formal *ORAL COMMENTS* at tonight's public meeting.

I wish to provide formal *WRITTEN COMMENTS* at tonight's public meeting.

(Written comments may be submitted at any time during the meeting)

Please give this form to the person at the information table. Thank you.



RECEIVED EXHIBIT A

AUG 29 2023

AT PUBLIC MEETING

JOE BANDA

120 Honey's Trail

Fentress Tx 78622

512 203 0292

e

I am concerned about the water quality in Callihan Creek since my livestock drink from it.

I am concerned about odor

Virginia

I am concerned about land values due to the treatment plant

I am concerned about the treatment levels of the effluent - ~~treatment levels~~

- I'd like to see TSS down to 5

- I want Phosphorus treated to 0.15 mg/l

- I want to see D.O. at 6, not 4

I want to see the plant manned 24 hours a day, 7 days a week

I want to see at least 75% reuse of the treated wastewater, like the current Cherryville permit has

I live within 1 mile of the treatment discharge point along Callihan Creek

I am a member of the San Marcos River Foundation and support all of their comments.

I am concerned about light pollution, extra traffic