

DOCKET NO. 2024-0414-MWD

APPLICATION BY  
BL 12 HOLDINGS LLC  
FOR NEW TPDES PERMIT  
NO. WQ0016297001

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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 BL 12 Holdings LLC (Applicant) seeking a new Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0016297001 and the Executive Director's preliminary decision. The Office of the Chief Clerk received a contested case hearing request from San Marcos River Foundation (SMRF).

Attached for Commission consideration is a satellite map of the area.

**II. Description of Facility**

BL 12 Holdings LLC has applied to the TCEQ for a new permit that would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 850,000 gallons per day. The JK Ranch Wastewater Treatment Facility will be an activated sludge process plant operated in the conventional mode. Treatment units in the Interim I phase will include a bar screen, two aeration basins, one final clarifier, one aerobic sludge digester, and a chlorine contact basin. Treatment units in the Interim II phase will include a bar screen, four aeration basins, two final clarifiers, two aerobic sludge digesters, and a chlorine contact basin. Treatment units in the Final phase will include a bar screen, nine aeration basins, five final clarifiers, six aerobic sludge digesters, and three chlorine contact basins. The facility has not been constructed.

The effluent limitations in the Interim I and Interim II phases of the draft permit, based on a 30-day average, are 5 mg/l five-day carbonaceous biochemical oxygen demand (CBOD<sub>5</sub>), 5 mg/l total suspended solids (TSS), 2 mg/l ammonia-nitrogen (NH<sub>3</sub>-N), 1 mg/l total phosphorous (TP), 126 colony forming units (CFU) or most probable number (MPN) of *Escherichia coli* (*E. coli*) per 100 ml, and 4.0 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 5 mg/l CBOD<sub>5</sub>, 5 mg/l TSS, 2 mg/l NH<sub>3</sub>-N, 1 mg/l TP, 126 CFU or MPN of *E. coli* per 100 ml and 4.0 mg/l DO. The effluent shall contain a total chlorine residual of at least 1.0 mg/l after a detention time of at least 20 minutes (based on peak flow). The permittee shall dechlorinate the chlorinated effluent to less than 0.1 mg/l total chlorine residual.

The facility will be located approximately 3,450 feet northeast of the intersection of Political Road and San Marcos Highway, in Caldwell County, Texas 78644. The treated effluent will be discharged to Callihan Creek, thence to Lower San Marcos River in Segment No. 1808 of the Guadalupe River Basin. The unclassified receiving water use is limited aquatic life use for Callihan Creek. The designated uses for Segment No. 1808 are primary contact recreation, public water supply, and high aquatic life use.

### **III. Procedural Background**

TCEQ received the application on February 15, 2023, and declared it administratively complete on March 29, 2023. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI) was published in English on April 6, 2023, in the *Lockhart Post Register* and in Spanish on April 6, 2023, in *El Mundo*. ED staff completed the technical review of the application on May 9, 2023, and prepared a draft permit. The Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater was published in English on July 20, 2023, in the *Lockhart Post Register* and in Spanish on July 20, 2023, in *El Mundo*. The Public Meeting Notice was published July 20, 2023. The public meeting was held on August 29, 2023. The public comment period ended on August 29, 2023, at the close of the public meeting.

This application was administratively complete on or after September 1, 2015. Therefore, it is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and Senate Bill 709, 84th Legislature, 2015.

### **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 requests to determine whether they comply with Commission rules, if the requestors qualify 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).**

SMRF submitted a timely hearing request that raised issues presented during the public comment period that have not been withdrawn. It provided its name, address, email address, and requested a public hearing. It identified itself as an organization with a member who has personal justiciable interests affected by the application, which will be discussed in greater detail below, and provided disputed issues of fact raised during the public comment period.

The Executive Director concludes that the hearing request of SMRF substantially complies with the section 55.201(c) and (d) requirements.

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

#### **San Marcos River Foundation (SMRF)**

San Marcos River Foundation (SMRF) submitted timely comments on BL 12 Holdings' application in which they stated that their organization was established to protect public access to and to protect the flow of aquifer fed springs into the San Marcos River, improve the water quality of the river, protect the beauty of the river and nearby parks, and protect streams that flow into the San Marcos River.

In their hearing request, they requested a hearing on the following issues: (1) Whether the draft permit complies with the Texas Surface Water Quality Standards, (2) Whether the draft permit complies with the applicable antidegradation requirements, (3) Whether the draft permit is protective of human health, (4) Whether the draft permit will prevent nuisance odors, and (5) Whether all applicable notice requirements were complied with and whether the notices contained accurate information.

In addition to the requirements in 30 TAC § 55.201 and 30 TAC § 55.203, a request for a contested case hearing by a group or association on an application filed on or after September 1, 2015, must meet the requirements in 30 TAC § 55.205(b). 30 TAC § 55.205(b) requires that the organization identify one or more members of the group or association would otherwise have standing to request a hearing in their own right.

In their hearing request, SMRF identified Joe Banda as a member of the organization. According to the information provided in the request and application

materials, Joe Banda's property is located approximately 0.33 miles from the proposed facility. The address listed for Mr. Banda by SMRF in its hearing request is listed on the downstream landowner list for property Nos. 5 and 6. In addition to SMRF's comments, Joe Banda also submitted timely comments on the BL 12 Holdings application, raising issues including water quality, human health, livestock, and nuisance odor. Due to his proximity to the proposed facility and the issues raises, Joe Banda is affected in a manner not common to the general public and would have standing to request a hearing in his own right. Thus, the ED has determined that SMRF has met the requirement for associational standing and should be considered an affected person.

The Executive Director recommends the Commission find that SMRF is an affected person and grant its hearing request.

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

The following issues were raised during the public comment period.

#### **1. Whether the draft permit is protective of human health, animal life, and the environment, in accordance with the Texas Surface Water Quality Standards. (RTC Response No. 1, 4-5)**

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 will not be protective of human health, animal life, and the environment, and does not comply with the Texas Surface Water Quality Standards, that information would be relevant and material to a decision on the application.

#### **2. Whether the draft permit adequately addresses nuisance odor in accordance with 30 TAC § 309.13. (RTC Response No. 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 will not adequately address nuisance odor, that information would be relevant and material to a decision on the application.

The Executive Director recommends referring this issue to SOAH.

#### **3. Whether the Applicant complied with all of TCEQ's notice requirements. (RTC Response No. 9-10)**

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 Applicant failed to comply with TCEQ's notice requirements, that information would be relevant and material to a decision on the application.

The Executive Director recommends referring this issue to SOAH.

#### **4. Whether the draft permit complies with TCEQ's rules regarding antidegradation. (RTC Response No. 1)**

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 comply with TCEQ's rules regarding antidegradation, that information would be relevant and material to a decision on the application.

**VI. 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.

**VII. Conclusion**

The Executive Director recommends the following actions by the Commission:

Find SMRF is an affected person and grant its hearing request.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel  
Executive Director

Charmaine Backens, Deputy Director  
Environmental Law Division



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Aubrey Pawelka, Staff Attorney  
Environmental Law Division  
State Bar No. 24121770  
P.O. Box 13087, MC 173  
Austin, Texas 78711-3087  
Phone: (512) 239-0622  
Fax: (512) 239-0626

REPRESENTING THE EXECUTIVE DIRECTOR OF  
THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**VIII. CERTIFICATE OF SERVICE**

I certify that on March 18, 2024, the “Executive Director’s Response to Hearing Requests” for new Texas Pollutant Discharge Elimination System (TPDES) No. WQ0016297001 by BL 12 Holdings LLC 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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Aubrey Pawelka, Staff Attorney  
Environmental Law Division  
State Bar No. 24121770  
P.O. Box 13087, MC 173  
Austin, Texas 78711-3087  
Phone (512) 239-0622  
Fax: (512) 239-0626



MAILING LIST/LISTA DE CORREO  
BL 12 Holdings LLC  
TCEQ Docket No./TCEQ Expediente N.º 2024-0414-MWD TPDES  
Permit No./TPDES Permiso N.º WQ0016297001

FOR THE APPLICANT/PARA EL  
SOLICITANTE:

Helen Gilbert, Attorney  
Barton Benson Jones PLLC  
7000 North Mopac Expressway  
Suite 200  
Austin, Texas 78731

Sudharsan Vembutty, Manager  
BL 12 Holdings LLC  
101 Parklane Boulevard, Suite 104  
Sugar Land, Texas 77478

Adan Rangel, P.E., Project Engineer  
BGE, Inc.  
101 West Louis Henna Boulevard  
Suite 400  
Austin, Texas 78728

Daniel LaCour, E.I.T.  
BGE, Inc.  
101 West Louis Henna Boulevard  
Suite 400  
Austin, Texas 78728

FOR THE EXECUTIVE DIRECTOR/PARA EL  
DIRECTOR EJECUTIVO

via electronic mail/vía correo electrónico:

Aubrey Pawelka, Staff Attorney  
Texas Commission on Environmental  
Quality  
Environmental Law Division, MC-173  
P.O. Box 13087  
Austin, Texas 78711

John Hearn, Technical Staff  
Texas Commission on Environmental  
Quality  
Water Quality Division, MC-148  
P.O. Box 13087  
Austin, Texas 78711

Ryan Vise, Deputy Director  
Texas Commission on Environmental  
Quality  
External Relations Division  
Public Education Program, MC-108  
P.O. Box 13087  
Austin, Texas 78711

FOR PUBLIC INTEREST COUNSEL/PARA  
ABOGADOS DE INTERÉS PÚBLICO

via electronic mail/vía correo electrónico:

Garrett T. Arthur, Attorney  
Texas Commission on Environmental  
Quality  
Public Interest Counsel, MC-103  
P.O. Box 13087  
Austin, Texas 78711

FOR ALTERNATIVE DISPUTE  
RESOLUTION/PARA LA RESOLUCIÓN  
ALTERNATIVA DE DISPUTAS

via electronic mail/vía correo electrónico:

Kyle Lucas  
Texas Commission on Environmental  
Quality  
Alternative Dispute Resolution, MC-222  
P.O. Box 13087  
Austin, Texas 78711

FOR THE CHIEF CLERK/PARA EL  
SECRETARIO OFICIAL

via eFilings/vía eFilings:

Docket Clerk  
Texas Commission on Environmental  
Quality  
Office of Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711

<https://www.tceq.texas.gov/goto/efilings>

REQUESTER(S)/INTERESTED  
PERSON(S)/SOLICITANTE(S)/PERSONA(S)  
INTERESADA(S):

See attached list/Ver lista adjunta

REQUESTER(S)/ SOLICITANTE(S)

Rose, Victoria  
Save Our Springs Alliance  
Ste D401  
4701 W Gate Blvd  
Austin Tx 78745-1479

PUBLIC OFFICIALS - INTERESTED

PERSON(S)/FUNCIONARIAS PUBLICA(S)/  
PERSONA(S) INTERESADA(S)

Zaffirini, The Honorable Judith  
State Senator  
The Senate Of Texas District 21  
PO Box 12068  
Austin Tx 78711-2068

Zaffirini, The Honorable Judith  
State Senator  
The Senate Of Texas District 21  
PO Box 627  
Laredo Tx 78042-0627

INTERESTED PERSON(S)/PERSONA(S)  
INTERESADA(S):

Andrews, Cristen  
291 S Main St  
Fentress Tx 78622

Andrews, Cristen  
PO Box 217  
Fentress Tx 78622-0217

Banda, Christine  
PO Box 126  
Fentress Tx 78622-0126

Banda, Joe  
PO Box 57  
Fentress Tx 78622-0057

Caldwell, Melanie  
PO Box 335  
Prairie Lea Tx 78661-0335

Davis, Linda G  
PO Box 424  
Fentress Tx 78622-0424

Holifield, Zay  
Apt B  
1005 Crockett St  
Lockhart Tx 78644-3392

Parker Condie, Virginia  
San Marcos River Foundation  
1061 Martindale Falls Rd  
Martindale Tx 78655-2536

Parker Condie, Virginia  
San Marcos River Foundation  
PO Box 1393  
San Marcos Tx 78667-1393

Vordenbaum, Michael T  
PO Box 13  
Fentress Tx 78622-0013

Williamson, Edward & Ruth  
PO Box 49  
Fentress Tx 78622-0049

# Attachment A

# BL 12 Holdings, LLC

WQ0016297001

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



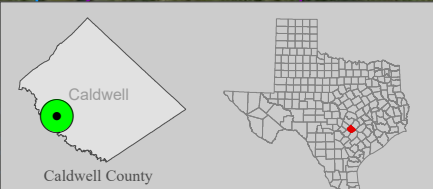
*Protecting Texas by  
Reducing and  
Preventing Pollution*

Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087  
Date: 3/8/2024  
CRF 0097320  
Cartographer: jbartlin

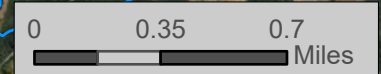


- Facility Outfall
- 0.5 Mile Radius
- 1.0 Mile Radius
- 1.5 Mile Radius
- SMRF (Joe Banda)
- 1.0 Mile Discharge

The facility outfall is 0.33 miles away from the requestor's, SMRF (Joe Banda), property boundary.



The facility is located in Caldwell 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 Caldwell County (red) in the state of Texas.



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.