

Jon Niermann, *Chairman*  
Bobby Janecka, *Commissioner*  
Catarina R. Gonzales, *Commissioner*  
Kelly Keel, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 29, 2024

TO: All interested persons.

RE: TCCI Montgomery Gardens, LLC  
TPDES Permit No. WQ0016354001

### **Decision of the Executive Director.**

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter are instructions to view the Executive Director's Response to Public Comment (RTC) on the Internet. Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at [chiefclk@tceq.texas.gov](mailto:chiefclk@tceq.texas.gov). A complete copy of the RTC (including the mailing list), complete application, draft permit and related documents, including public comments, are available for review at the TCEQ Central Office. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Charles Rike Memorial Library, 203 Orange Avenue, Farmersville, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. The procedures for the commission's evaluation of hearing requests/requests for reconsideration are located in 30 Texas Administrative Code Chapter 55, Subchapter F. A brief description of the procedures for these two requests follows.

### **How to Request a Contested Case Hearing.**

It is important that your request include all the information that supports your right to a contested case hearing. Your hearing request must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.

---

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • [tceq.texas.gov](http://tceq.texas.gov)

How is our customer service? [tceq.texas.gov/customersurvey](http://tceq.texas.gov/customersurvey)  
printed on recycled paper

- (2) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (3) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."
- (4) If the request is made by a group or association, the request must identify:
  - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group;
  - (B) the comments on the application submitted by the group that are the basis of the hearing request; and
  - (C) by name and physical address one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

Additionally, your request must demonstrate that you are an **"affected person."** 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. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application that were raised **by you** during the public comment period. The request cannot be based solely on issues raised in comments that you have withdrawn.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to **your** comments that you dispute; 2) the factual basis of the dispute; and 3) list any disputed issues of law.

### **How to Request Reconsideration of the Executive Director's Decision.**

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

### **Deadline for Submitting Requests.**

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date

of this letter. You may submit your request electronically at [www.tceq.texas.gov/agency/decisions/cc/comments.html](http://www.tceq.texas.gov/agency/decisions/cc/comments.html) or by mail to the following address:

Laurie Gharis, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

### **Processing of Requests.**

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the TCEQ's Alternative Dispute Resolution Program and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

### **How to Obtain Additional Information.**

If you have any questions or need additional information about the procedures described in this letter, please call the Public Education Program, toll free, at 1-800-687-4040.

Sincerely,

A handwritten signature in black ink that reads "Laurie Gharis". The signature is written in a cursive, flowing style.

Laurie Gharis  
Chief Clerk

LG/cb

Enclosure

**EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT**  
**for**  
**TCCI Montgomery Gardens, LLC**  
**TPDES Permit No. WQ0016354001**

The Executive Director has made the Response to Public Comment (RTC) for the application by TCCI Montgomery Gardens, LLC for TPDES Permit No. WQ0016354001 available for viewing on the Internet. You may view and print the document by visiting the TCEQ Commissioners' Integrated Database at the following link:

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

In order to view the RTC at the link above, enter the TCEQ ID Number for this application (WQ0016354001) and click the "Search" button. The search results will display a link to the RTC.

Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at [chiefclk@tceq.texas.gov](mailto:chiefclk@tceq.texas.gov).

**Additional Information**

For more information on the public participation process, you may contact the Office of the Public Interest Counsel at (512) 239-6363 or call the Public Education Program, toll free, at (800) 687-4040.

A complete copy of the RTC (including the mailing list), the complete application, the draft permit, and related documents, including comments, are available for review at the TCEQ Central Office in Austin, Texas. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Charles Rike Memorial Library, 203 Orange Avenue, Farmersville, Texas.



## COMISIÓN DE CALIDAD AMBIENTAL DE TEXAS

*Protegiendo a Texas reduciendo y previniendo la contaminación*

August 29, 2024

TO: Todas las personas interesadas.

RE: TCCI Montgomery Gardens, LLC  
TPDES Permiso No. WQ0016354001

### **Decisión del Director Ejecutivo.**

El director ejecutivo ha tomado la decisión de que la solicitud de permiso mencionada anteriormente cumple con los requisitos de la ley aplicable. **Esta decisión no autoriza la construcción u operación de ninguna instalación propuesta.** Esta decisión será considerada por los comisionados en una reunión pública programada regularmente antes de que se tome cualquier medida sobre esta solicitud, a menos que todas las solicitudes de audiencia o reconsideración de casos impugnados hayan sido retiradas antes de esa reunión.

Se adjuntan a esta carta las instrucciones para ver en Internet la Respuesta del Director Ejecutivo al Comentario Público (RTC). Las personas que prefieran una copia por correo del RTC o que tengan problemas para acceder al RTC en el sitio web, deben comunicarse con la Oficina del Secretario Oficial, por teléfono al (512) 239-3300 o por correo electrónico a [chiefclk@tceq.texas.gov](mailto:chiefclk@tceq.texas.gov). Una copia completa del RTC (incluida la lista de correo), la solicitud completa, el borrador del permiso y los documentos relacionados, incluidos los comentarios públicos, están disponibles para su revisión en la Oficina Central de TCEQ. Además, una copia de la solicitud completa, el borrador del permiso y la decisión preliminar del director ejecutivo están disponibles para ver y copiar en Charles Rike Memorial Library, 203 Orange Avenue, Farmersville, Texas.

Si no está de acuerdo con la decisión del director ejecutivo y cree que es una "persona afectada" como se define a continuación, puede solicitar una audiencia de caso impugnado. Además, cualquier persona puede solicitar la reconsideración de la decisión del director ejecutivo. Los procedimientos para la evaluación de la comisión de las solicitudes de audiencia/solicitudes de reconsideración se encuentran en 30 Código Administrativo de Texas, Capítulo 55, Subcapítulo F. A continuación, se presenta una breve descripción de los procedimientos para estas dos solicitudes.

### **Cómo solicitar una audiencia de caso impugnado.**

Es importante que su solicitud incluya toda la información que respalde su derecho a una audiencia de caso impugnado. Su solicitud de audiencia debe demostrar que cumple con los requisitos legales aplicables para que se le conceda su solicitud de audiencia. La consideración de la comisión de su solicitud se basará en la información que usted proporcione.

La solicitud debe incluir lo siguiente:

- (1) Su nombre, dirección, número de teléfono durante el día y, si es posible, un número de fax.
- (2) El nombre del solicitante, el número de permiso y otros números enumerados anteriormente para que su solicitud pueda procesarse adecuadamente.
- (3) Una declaración que exprese claramente que está solicitando una audiencia de caso impugnado. Por ejemplo, la siguiente declaración sería suficiente: "Solicito una audiencia de caso impugnado".
- (4) Si la solicitud es realizada por un grupo o asociación, la solicitud debe identificar:
  - (A) una persona por nombre, dirección, número de teléfono durante el día y, si es posible, el número de fax, de la persona que será responsable de recibir todas las comunicaciones y documentos para el grupo.;
  - (B) los comentarios sobre la solicitud presentada por el grupo que constituyen la base de la solicitud de audiencia; y
  - (C) por nombre y dirección física, uno o más miembros del grupo que de otro modo tendrían derecho a solicitar una audiencia por derecho propio. Los intereses que el grupo busca proteger deben estar relacionados con el propósito de la organización. Ni la reclamación alegada ni la reparación solicitada deben requerir la participación de los miembros individuales en el caso.

Además, su solicitud debe demostrar que usted es una **"persona afectada"**. Una persona afectada es aquella que tiene un interés justiciable personal relacionado con un derecho, deber, privilegio, poder o interés económico legal afectado por la solicitud. Su solicitud debe describir cómo y por qué se vería afectado negativamente por la instalación o actividad propuesta de una manera que no sea común al público en general. Por ejemplo, en la medida en que su solicitud se base en estas preocupaciones, debe describir el impacto probable en su salud, seguridad o usos de su propiedad que puedan verse afectados negativamente por la instalación o las actividades propuestas. Para demostrar que tiene un interés personal justiciable, debe indicar, tan específicamente como pueda, su ubicación y la distancia entre su ubicación y la instalación o actividades propuestas.

Su solicitud debe plantear cuestiones de hecho controvertidas que sean relevantes y materiales para la decisión de la comisión sobre esta solicitud que fueron planteadas **por usted** durante el período de comentarios públicos. La solicitud no puede basarse únicamente en cuestiones planteadas en los comentarios que haya retirado.

Para facilitar la determinación por parte de la comisión del número y alcance de los asuntos que se remitirán a la audiencia, usted debe: 1) especificar cualquiera de las respuestas del director ejecutivo a **sus** comentarios que usted disputa; 2) la base fáctica de la disputa; y 3) enumerar cualquier cuestión de derecho en disputa.

### **Cómo solicitar la reconsideración de la decisión del Director Ejecutivo.**

A diferencia de una solicitud de audiencia de caso impugnado, cualquier persona puede solicitar la reconsideración de la decisión del director ejecutivo. Una solicitud de reconsideración debe contener su nombre, dirección, número de teléfono durante el día y, si

es posible, su número de fax. La solicitud debe indicar que está solicitando la reconsideración de la decisión del director ejecutivo, y debe explicar por qué cree que la decisión debe ser reconsiderada.

### **Fecha límite para la presentación de solicitudes.**

La oficina del Secretario Oficial debe **recibir** una solicitud de audiencia de caso impugnado o reconsideración de la decisión del director ejecutivo a más tardar **30 días calendario** después de la fecha de esta carta. Puede enviar su solicitud electrónicamente a [www.tceq.texas.gov/agency/decisions/cc/comments.html](http://www.tceq.texas.gov/agency/decisions/cc/comments.html) o por correo a la siguiente dirección:

Laurie Gharis, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

### **Procesamiento de solicitudes.**

Las solicitudes oportunas para una audiencia de caso impugnado o para la reconsideración de la decisión del director ejecutivo se remitirán al Programa de Resolución Alternativa de Disputas de TCEQ y se incluirán en la agenda de una de las reuniones programadas regularmente de la comisión. Las instrucciones adicionales que explican estos procedimientos se enviarán a la lista de correo adjunta cuando se haya programado esta reunión.

### **Cómo obtener información adicional.**

Si tiene alguna pregunta o necesita información adicional sobre los procedimientos descritos en esta carta, llame al Programa de Educación Pública, al número gratuito, 1-800-687-4040.

Atentamente,



Laurie Gharis  
Secretaria Oficial

LG/cb

Recinto

**RESPUESTA DEL DIRECTOR EJECUTIVO AL COMENTARIO DEL PÚBLICO**  
**para**  
**TCCI Montgomery Gardens, LLC**  
**TPDES Permiso No. WQ0016354001**

El Director Ejecutivo ha puesto a disposición de Internet la respuesta al comentario público (RTC) para la solicitud de TCCI Montgomery Gardens, LLC del permiso de TPDES No. WQ0016354001. Puede ver e imprimir el documento visitando la Base de Datos Integrada de los Comisionados de TCEQ en el siguiente enlace:

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

Para ver el RTC en el enlace anterior, ingrese el número de identificación TCEQ para esta solicitud (WQ0016354001) y haga clic en el botón "Buscar". Los resultados de la búsqueda mostrarán un enlace al RTC.

Las personas que prefieran una copia por correo del RTC o que tengan problemas para acceder al RTC en el sitio web, deben comunicarse con la Oficina del Secretario Oficial, por teléfono al (512) 239-3300 o por correo electrónico a [chiefclk@tceq.texas.gov](mailto:chiefclk@tceq.texas.gov).

**Información adicional**

Para obtener más información sobre el proceso de participación pública, puede comunicarse con la Oficina del Asesor de Interés Público al (512) 239-6363 o llamar al Programa de Educación Pública, al número gratuito, (800) 687-4040.

Una copia completa del RTC (incluida la lista de correo), la solicitud completa, el borrador del permiso y los documentos relacionados, incluidos los comentarios, están disponibles para su revisión en la Oficina Central de TCEQ en Austin, Texas. Además, una copia de la solicitud completa, el borrador del permiso y la decisión preliminar del director ejecutivo están disponibles para ver y copiar en Charles Rike Memorial Library, 203 Orange Avenue, Farmersville, Texas.



MAILING LIST / LISTA DE CORREO  
for / para  
TCCI Montgomery Gardens, LLC  
TPDES Permit No. WQ0016354001 / TPDES Permiso No. WQ0016354001

FOR THE APPLICANT /  
PARA EL SOLICITANTE:

Richard Alberque, Vice President  
TCCI Montgomery Gardens, LLC  
14675 Dallas Parkway, Suite 575  
Dallas, Texas 75254

Lauren Wahl, P.E.  
Water Resources Engineer  
Reuse Engineering, Inc.  
4411 South Interstate 35, Suite 100  
Georgetown, Texas 78626

INTERESTED PERSONS /  
PERSONAS INTERESADAS:

See Attached List

FOR THE EXECUTIVE DIRECTOR / PARA  
EL DIRECTOR EJECUTIVO  
via electronic mail /  
por correo electrónico:

Ryan Vise, Deputy Director  
Texas Commission on Environmental  
Quality  
External Relations Division  
Public Education Program MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087

Anthony Tatu, Staff Attorney  
Texas Commission on Environmental  
Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087

Abdur Rahim, Technical Staff  
Texas Commission on Environmental  
Quality  
Water Quality Division MC-148  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL /  
PARA ABOGADOS DE INTERÉS PÚBLICO  
via electronic mail /  
por correo electrónico:

Garrett T. Arthur, Attorney  
Texas Commission on Environmental  
Quality  
Public Interest Counsel MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR THE CHIEF CLERK /  
PARA EL SECRETARIO OFICIAL  
via electronic mail  
por correo electrónico:

Laurie Gharis, Chief Clerk  
Texas Commission on Environmental  
Quality  
Office of Chief Clerk MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

AIRHART , TOM WALLIS  
PO BOX 140  
COPEVILLE TX 75121-0140

AIRHART , TOM WALLIS  
15762 FM 1778  
NEVADA TX 75173-8145

GREGG , PETER T  
GREGG LAW PC  
STE 3  
910 WEST AVE  
AUSTIN TX 78701-2231

KALISEK , LAUREN J  
LLOYD GOSSELINK ROCHELLE & TOWNSEND PC  
STE 1900  
816 CONGRESS AVE  
AUSTIN TX 78701-2442

## TPDES PERMIT NO. WQ0016354001

APPLICATION BY THE	§	BEFORE THE
TCCI MONTGOMERY GARDENS, LLC	§	TEXAS COMMISSION ON
TPDES PERMIT NO. WQ0016354001	§	ENVIRONMENTAL QUALITY

---

### EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

---

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment on the application by TCCI Montgomery Gardens, LLC (TCCI Montgomery Gardens, Applicant) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016354001 and on the ED's preliminary decision on the application. As required by Title 30 of the Texas Administrative Code (30 TAC) Section (§) 55.156, before a permit is issued, the ED prepares a response to all timely, relevant, and material, or significant comments. The Office of the Chief Clerk (OCC) received timely comments and hearing requests from Lauren J. Kalisek (on behalf of North Texas Municipal Water District), Tom Wallis Airhart, and Peter T. Gregg. This response addresses all timely public comments received, whether withdrawn or not. For more information about this permit application or the wastewater permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found on the TCEQ website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

### BACKGROUND

The Applicant applied for new TPDES permit No. WQ0016354001 to authorize a discharge of treated domestic wastewater (effluent) at a daily average flow limit of 0.15 million gallons per day (proposed discharge) from the Applicant's Wastewater Treatment Facility (WWTF), TCCI Montgomery Gardens WWTP (TCCI Montgomery facility). Sludge generated from the treatment facility is hauled by a registered transporter and disposed of at a TCEQ-permitted landfill, Charles M Hinton Jr Regional Landfill, Permit No. 1895A, in Dallas County. The draft permit also authorizes the disposal of sludge at a TCEQ-authorized land application site, co-disposal landfill, wastewater treatment facility, or facility that further processes sludge.

#### Description of Facility/Discharge Route

If this draft permit is ultimately issued, the TCCI Montgomery facility will be located approximately 1.0 miles southeast of the intersection of Farm-to-Market Road 549 and Texas State Highway 78 near Copeville, in Collin County, Texas 75442 and will consist of a membrane bioreactor (MBR) treatment system, which combines conventional biological activated sludge processes with membrane filtration. Treatment units will include three fine screens, an anoxic basin, an aerobic basin, a MBR basin, a sludge press, and an ultraviolet light (UV) disinfection system. The discharge route for the proposed discharge is via pipe to an unnamed tributary, thence to Price Creek, thence to Lake Lavon in Segment No. 0821 of the Trinity River Basin (proposed discharge route).

#### Technical Review

TCEQ has primary authority over water quality in Texas and federal regulatory authority for the TPDES program, which controls discharges of pollutants into Texas

surface waterbodies (“water in the state”). Texas Water Code (TWC) § 26.027 authorizes the TCEQ to issue permits for discharges into water in the state, and the ED evaluates applications for discharge permits based on the information provided in the application and can recommend issuance or denial of a draft permit based on its compliance with the TWC and TCEQ rules. Specifically, the ED’s technical review evaluates impacts from the proposed discharge on the receiving waters starting at the discharge point (an unnamed tributary), according to 30 TAC Chapter 307, the Texas Surface Water Quality Standards (TSWQS) and the TCEQ’s *Implementation Procedures for the Texas Surface Water Quality Standards* (June 2010, IPs).

The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary and Price Creek. The designated uses for Segment No. 0821 are primary contact recreation, public water supply, 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 § 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 Lake Lavon, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The technical review process for surface water quality is conducted by staff in the ED’s Water Quality Division (WQD staff) on the Standards Implementation Team (Standards Team) and WQD staff in the Water Quality Assessment Section (Modeling Team). With the goal of the technical review being to maintain a level of water quality sufficient to protect the existing uses of the receiving surface waters, WQD staff reviewed the application in accordance with the TSWQS and TCEQ’s IPs.

The first component of the ED’s technical review involved WQD staff on the Standards Team reviewing the classifications, designations, and descriptions of the receiving surface waters for the proposed discharge. Along with other available information, reviewing the receiving waters for the proposed discharge allows the Standards Team to preliminarily determine the aquatic life uses in the area of the proposed discharge’s possible impact and assign the corresponding minimum DO criterion as stipulated at 30 TAC § 307.5 (TSWQS) and in the TCEQ’s IPs. For applications for new discharges, the Standards Team performs an antidegradation analysis of the proposed discharge, and per 30 TAC § 307.5 (TSWQS) and the TCEQ’s IPs, an antidegradation review of the receiving waters was performed that included nutrient screenings. A nutrient screening indicates that no nutrient limitations are warranted at this time and based on Best Professional Judgment (BPJ), no limit is needed.

As with all determinations, reviews, or analyses related to the technical review of the proposed permit, the above and below can be reexamined and subsequently modified upon receipt of new information or information that conflicts with the bases employed in the applicable review or analysis.

The second component of the ED’s technical review involved WQD staff on the Modeling Team performing water quality modeling to assess effluent limits required to protect the aquatic life uses of the receiving waterbodies. The proposed permit’s water quality-related effluent limits, established by the Modeling Team’s QUAL-TX modeling results, will maintain and protect the existing instream uses. Similarly, conventional

effluent parameters such as minimum dissolved oxygen (DO), Five-day Carbonaceous Biochemical Oxygen Demand (CBOD<sub>5</sub>), Total Suspended Solids (TSS), and Ammonia Nitrogen (NH<sub>3</sub>-N), are based on stream standards and waste load allocations for water quality-limited streams as established in the TSWQS and the State of Texas Water Quality Management Plan.

Based on model results, the effluent limits below are predicted to be **necessary** to maintain dissolved oxygen level above the criteria stipulated by the Standards Implementation Team for the unnamed tributary and Price Creek are minimal aquatic life use and 2.0 mg/L dissolved oxygen.

0.15 MGD phase: **10 mg/L CBOD<sub>5</sub>, 3 mg/L NH<sub>3</sub>-N, and 5.0 mg/L DO**

The applicant initially requested effluent limitations, based on a 30-day average, of 10 mg/l CBOD<sub>5</sub>, 10 mg/l TSS, 5.0 mg/l NH<sub>3</sub>-N, 1.0 mg/l TP, 126 CFU or MPN of *E. coli* per 100 ml and 5.0 mg/l minimum DO. However, due to multiple protesting public comments received after the notice publication, the applicant voluntarily committed to maintaining higher effluent quality standards for the facility, which is, based on a 30-day average, of **5.0 mg/l CBOD<sub>5</sub>, 5.0 mg/l TSS, 2.0 mg/l NH<sub>3</sub>-N, 1.0 mg/l TP**, 126 CFU or MPN of *E. coli* per 100 ml and 5.0 mg/l minimum DO.

Coefficients and kinetics used in the model are a combination of estimated and standardized default values and values derived from the WLE. The results of this evaluation can be reexamined upon receipt of information that conflicts with the assumptions employed in this analysis.

In the proposed permit, the pH must not be less than 6.0 standard units nor greater than 9.0 standard units and must be monitored once per month by grab sample. There must be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

Segment No. 0821 is not currently listed on the state's inventory of impaired and threatened waters (the 2022 CWA § 303(d) list).

The discharge from this permit action is not expected to have an effect on any federal endangered or threatened aquatic or aquatic-dependent species or proposed species or their critical habitat. This determination is based on the United States Fish and Wildlife Service's (USFWS's) biological opinion on the State of Texas authorization of the TPDES (September 14, 1998; October 21, 1998, update). To make this determination for TPDES permits, TCEQ and the Environmental Protection Agency (EPA) only considered aquatic or aquatic-dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. The permit does not require EPA review with respect to the presence of endangered or threatened species.

### **Procedural Background**

TCEQ received the application on June 13, 2023, and declared it administratively complete on August 7, 2023. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English in the *McKinney Courier Gazette* on August 13, 2023, and in Spanish in *La Prensa Comunidad* on August 22, 2023. The ED completed the technical review of the application on January 4, 2024, and prepared the proposed draft permit, which if approved, establishes the conditions under which the facility must operate. The Applicant published the Notice of Application and Preliminary

Decision (NAPD) in English in the *McKinney Courier Gazette* on February 11, 2024, and in Spanish in *La Prensa Comunidad* on March 5, 2024.

The public comment period ended on April 4, 2024. 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. The Texas Legislature enacted SB 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. This application is subject to those changes in the law.

### **Access to Rules, Laws, and Records**

Please consult the following websites to access the rules and regulations applicable to this permit.

- Secretary of State website: [www.sos.state.tx.us](http://www.sos.state.tx.us)
- TCEQ rules in 30 TAC: [www.sos.state.tx.us/tac](http://www.sos.state.tx.us/tac) (select “TAC Viewer” on the right, then “Title 30 Environmental Quality”)
- Texas statutes: [www.statutes.legis.state.tx.us](http://www.statutes.legis.state.tx.us)
- TCEQ website: [www.tceq.texas.gov/rules/indxpdf.html](http://www.tceq.texas.gov/rules/indxpdf.html) (for downloadable rules in Microsoft Word or Adobe PDF formats, select “Rules,” then “Current Rules and Regulations,” then “Download TCEQ Rules”)
- Federal rules in Title 40 of the Code of Federal Regulations: [www.ecfr.gov/current/title-40](http://www.ecfr.gov/current/title-40)
- Federal environmental laws: [www.epa.gov/lawsregs](http://www.epa.gov/lawsregs)

Commission records for the TCCI Montgomery Gardens facility are available for viewing and copying at TCEQ’s main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken). Some documents located at the Office of the Chief Clerk may also be located in the TCEQ Commissioners’ Integrated Database at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). The permit application has been available for viewing and copying at Charles Rike Memorial Library, 203 Orange Avenue, Farmersville, Texas, since publication of the NORI. The final permit application, proposed permit, statement of basis/technical summary, and the ED’s preliminary decision are now available for viewing and copying at the same location since publication of the NAPD.

The draft permit does not limit anyone’s ability to seek legal remedies from the Applicants regarding any potential trespass, nuisance, or other cause of action in response to the proposed facility’s activities that may result in injury to human health or property or interfere with the normal use and enjoyment of property.

### **COMMENTS AND RESPONSES**

#### **Comment: 1:**

Tom Wallis Airhart provided comments and questions related to regionalization.

#### **Response 1:**

Under section 26.081 of the Texas Water Code, the TCEQ must “encourage and

promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.” Additionally, section 26.0282 of the Texas Water Code provides the following:

In considering the issuance, amendment, or renewal of a permit to discharge waste, the commission may deny or alter the terms and conditions of the proposed permit, amendment, or renewal 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 not designated as such by commission order pursuant to provisions of this subchapter. This section is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater.

The ED evaluates regionalization inquiries when an applicant files an application for a new permit or an application for a major amendment to an existing permit to increase flow. In these instances, if there is a wastewater treatment facility or collection system within three miles of the proposed facility, the applicant is required to provide information to the ED as to whether the nearby facility has sufficient existing capacity to accept the additional volume of wastewater proposed in the application. If such a facility exists and it is willing to accept the proposed waste, the applicant must provide an analysis of expenditures required to connect to the existing wastewater treatment facility. Additionally, the applicant is required to provide copies of all correspondence with the owners of the existing facilities within three miles of the proposed facility regarding connecting to their systems.

The TCEQ’s policy on regionalization does not require the agency to deny a wastewater discharge application on the basis that there is a pending application for a regional plant within three miles of a proposed facility. Additionally, the fact that a facility or collection system is located within three miles of a proposed facility is not an automatic basis to deny an application. For example, the ED has approved new discharges or major amendments to increase flow in situations where the applicant has provided an economic justification by demonstrating that connecting to the existing facility would be prohibitively expensive.

On page 22 of the Domestic Technical Report 1.1 in the application, the Applicant answered that there is one (1) domestic wastewater treatment facility or collection system located within three (3) miles of the proposed facility. Applicant received a letter from the City of Lavon, dated April 27, 2023, saying that ‘The City of Lavon is neither able nor willing to provide service to the TCCI Montgomery Gardens project location’. Accordingly, the ED concluded that the Applicant’s draft permit in this case is consistent with the Commission’s regionalization policy.

**Comment: 2:**

Tom Wallis Airhart provided comments stating that he is concerned that the draft permit could contribute to flooding and erosion.

**Response 2:**

The ED encourages the participation of all individuals in the environmental permitting process. However, there are certain concerns of individuals that the TCEQ cannot address in the review of a wastewater discharge permit, as the scope of the ED’s jurisdiction in a TPDES application is limited to the issues set out by statute. The TCEQ

does not have jurisdiction to address flooding or erosion issues in the wastewater permitting process. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters.

While the Texas Legislature has given the TCEQ the responsibility to protect water quality, and section 26.027 of the Texas Water Code (TWC) authorizes the TCEQ to issue permits to control the discharge of wastes or pollutants into state waters and to protect the water quality of the state's rivers, lakes, and coastal waters, and the proposed permit establishes terms and conditions that are intended to provide water quality pollution control, which focuses on controlling the discharge of pollutants into water in the state, the ED through her Water Quality Division (WQD) has no jurisdiction to address flooding or erosion issues in the wastewater permitting process, which is limited to controlling the discharge of pollutants into waters in the state and protecting the water quality of the state's waterbodies.

While the TCEQ does not have jurisdiction to regulate flooding in the context of a wastewater discharge permit to the extent that a concern over flooding also involves water quality, the Applicant is always required to comply with all the numeric and narrative effluent limitations and other conditions in the proposed permit, including during flooding conditions. Likewise, the proposed permit includes effluent limits and other requirements that the Applicant must meet even during rainfall events and periods of flooding. According to the application, the TCCI Montgomery Gardens, LLC facility will be located above the 100-year flood plain. For additional protection, the proposed permit includes Other Requirement No. 4, which requires the Applicant to provide protection for the facility against a 100-year flood event.

Similarly, the TSWQS require that discharges not cause surface waters to be toxic to aquatic life, terrestrial wildlife, livestock, or domestic animals. WQD Staff drafted the proposed permit with provisions to ensure that the TSWQS will be maintained, ensuring the proposed discharge is protective of human health, aquatic life, livestock, domestic animals, and the environment. Likewise, the proposed permit's effluent limits will protect the uses and quality of the waterbodies in the route of the proposed discharge for the benefit of the animals that interact with those waterbodies.

For flooding concerns, please contact the local floodplain administrator for this area. If you need help finding the local floodplain administrator, please call the TCEQ Resource Protection Team at (512) 239-4691. For Collin County Floodplain Administrator call 830-393-8357. Additionally, the Federal Emergency Management Agency (FEMA) has programs designed to mitigate damage caused by flooding, that can be found at the following website: <https://www.fema.gov/floodplain-management>.

Finally, the issuance of a permit by the TCEQ does not authorize any injury to persons or property or an invasion of others property rights. In addition, the scope of TCEQ's regulatory jurisdiction does not, nor does the proposed permit, limit the ability of nearby landowners to seek relief from a court or use common law remedies in response to trespass, nuisance, other causes of action in response to activities that may or do interfere with the use and enjoyment of their property, or that may or do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property. If the Applicant's activities create any nuisance conditions, the TCEQ may be contacted to investigate whether a permit violation has occurred.



**Comment: 3:**

Tom Wallis Airhart raised concern about the draft permit's potential to create nuisance odors.

**Response 3:**

All wastewater treatment facilities have the potential to generate odors. To control and abate odors the TCEQ rules require domestic WWTPs to meet buffer zone requirements for the abatement and control of nuisance odor according to 30 TAC § 309.13(e), which provides three options for applicants to satisfy the nuisance odor abatement and control requirements. The TCCI Montgomery Gardens can comply with the rule by: 1) ownership of the buffer zone area; 2) restrictive easement from the adjacent property owners for any part of the buffer zone not owned by the TCCI Montgomery Gardens; or 3) providing nuisance odor control.<sup>1</sup>

According to its application, the TCCI Montgomery Gardens intends to comply with the requirement to abate and control nuisance of odor by locating the treatment units at least 150 feet from the nearest property line.<sup>2</sup> This requirement is incorporated in the draft permit.<sup>3</sup> Therefore, nuisance odor is not expected to occur as a result of the permitted activities at the facility if the permittee operates the facility in compliance with TCEQ's rules and the terms and conditions of the draft permit.

Further, the TCCI Montgomery Gardens proposes in its application that the TCCI Montgomery WWTP will consist of a membrane bioreactor (MBR) treatment system, which combines conventional biological activated sludge processes with membrane filtration. The activated sludge process is the most frequently used biological wastewater treatment process for treating domestic wastewater, and the use of the extended aeration variation has been known to produce highly treated effluent with low biosolids production. When properly treated by the proposed wastewater treatment process, the effluent is not expected to have an offensive odor.

If anyone experiences nuisance odor conditions or any other suspected incidents of noncompliance with the permit or TCEQ rules, they may be reported to TCEQ by calling toll-free 1-888-777-3186, or the TCEQ Region 4 Office in Dallas at (817) 588-5700. Citizen complaints may also be filed on-line at <https://www.tceq.texas.gov/compliance/complaints>

Moreover, the permit does not limit the ability of an individual to seek legal remedies against the Applicant regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that may interfere with the normal use and enjoyment of property.

**Comment: 4:**

Tom Wallis Airhart commented that the permit application is flawed and inadequate.

**Response 4:**

As provided by state law, a permittee is subject to administrative penalties for

---

<sup>1</sup> 30 TEX. ADMIN. CODE § 309.13(e).

<sup>2</sup> TCCI Montgomery Gardens, LLC Permit Application, Administrative Report, 1.1, Item No. 2(b), page 2, and Attachment E.

<sup>3</sup> TCCI Montgomery Gardens, LLC Draft Permit, Other Requirements, Item No. 4, page 34.

negligently or knowingly violating the Clean Water Act, Texas Water Code §§ 26, 27, and 28, and the Texas Health and Safety Code § 361, including but not limited to knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under the draft permit, including monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with or knowingly rendering inaccurate any monitoring device or method required by this permit or violating any other requirement imposed by state or federal regulations.<sup>4</sup>

The applicant prepared the application and certified under penalty of law that this document and all attachments were prepared under their direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on their inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of their knowledge and belief, true, accurate, and complete. The applicant is aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. The applicant further certified that they are authorized under 30 Texas Administrative Code § 305.44 to sign and submit this document and can provide documentation in proof of such authorization upon request.

**Comment: 5:**

Tom Wallis Airhart commented that there is a considerable public interest in this project and the landowners should get the opportunity to ask questions.

**Response 5:**

For new permit and major amendment applications, the Applicant must provide a list of affected landowners and a map showing their location(s). Affected landowners are landowners located adjacent to the wastewater treatment plant site and landowners with property on either side of the receiving stream for approximately one mile downstream from the point of discharge. The applicant is required to certify that the submitted application is accurate. The adjacent landowners map was provided in response to section 1 of Administrative Report 1.1. The portion of the application that requires the applicant to demonstrate compliance with section 309.13(e) is section 3.A and B of the same report. The TCEQ mails notice of the application to the affected landowners and others on the mailing list for the application, which is maintained by the Office of Chief Clerk.

According to the application the applicant included ‘Tom Patterson and Jo Anne Airhart, P.O. Box 140, Copeville, TX 75121-0140’ as an affected landowners in the Landowner’s Cross Reference List for this application.

Additionally, the TCEQ’s notice rules for a new permit or major amendment require mailed Notice of Receipt of Application and Intend to Obtain Water Quality Permit (NORI) and Notice of Application and Preliminary Decision (NAPD) to landowners named on the application map and persons on the mailing list maintained by the Office of the Chief Clerk.<sup>5</sup> The applicant is required to submit a landowner map as part of the application materials. The landowner map must include the property boundaries of landowners surrounding the applicant’s property and the property boundaries of all

---

<sup>4</sup> TCCI Montgomery Gardens, LLC Draft Permit, Monitoring and Reporting Requirements, Item 1, page 5.

<sup>5</sup> See 30 TEX. ADMIN. CODE §§ 39.413, 39.418, 39.419, and 39.551.

landowners surrounding the discharge point and on both sides of the discharge route for one full stream mile downstream of the discharge point.

The Copies of the NORI and NAPD were mailed out to each person on the landowners list. Additionally, a copy of the permit application (including location maps) and the NAPD notice with a URL link to the TCEQ on-line location map (showing the location of the facility) are available for viewing and copying at the TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of the Chief Clerk). The Applicant states that the permit application has been available for viewing and copying at Charles Rike Memorial Library, 203 Orange Avenue, Farmersville, Texas since publication of the NORI. The final permit application, proposed permit, statement of basis/technical summary, and the ED's preliminary decision are now available for viewing and copying at the same location since publication of the Combined NORI-NAPD. Additionally, during regular business hours, the public may review, ask any questions, or copy the public file for this application, which includes the application, its attachments, the comment letters, this Response to Public Comment, and any other communications made during the review of this application, at TCEQ's Office of the Chief Clerk.

**Comment: 6:**

Tom Wallis Airhart expressed concerns about well-water system protection due to this discharge and concerns about the level of fecal coliform.

**Response 6:**

The legislature has determined that "the goal of groundwater policy in this state is that the existing quality of groundwater is not degraded. This goal of non-degradation does not mean zero-contaminant discharge."<sup>6</sup> Chapter 26 of the Texas Water Code further states, "discharges of pollutants, disposal of wastes, or other activities subject to regulation by state agencies be conducted in a manner that will maintain present uses and not impair potential uses of groundwater or pose a public health hazard."<sup>7</sup>

The Water Quality Division has determined that the draft permit is in accordance with the Texas Surface Water Quality Standards, which ensures that the effluent discharge is protective of aquatic life, human health, and the environment. The review process for surface water quality is conducted by the Standards Implementation Team and Water Quality Assessment Team surface water modelers. The Water Quality Division has determined that if the surface water quality is protected, then the groundwater quality in the vicinity will not be impacted by the discharge. Therefore, the permit limits given in the draft permit intended to maintain the existing uses of the surface waters and preclude degradation will also protect groundwater.

Further, 30 TAC § 309.13(c) states that a wastewater treatment plant unit may not be located closer than 500 feet from a public water well nor 250 feet from a private water well. Public water supply systems in Texas are regulated by the TCEQ's Water Supply Division. Please contact the Water Supply Division at 512-239-4691 for more information.

The Ground Water Rule does not address private wells because they are not under the jurisdiction of the Safe Drinking Water Act and are therefore not subject to TCEQ regulation. TCEQ recommends that well owners periodically test their water for

---

<sup>6</sup> Texas Water Code § 26.401(b).

<sup>7</sup> Texas Water Code § 26.401(c)(2).

microbial and chemical contaminants and properly maintain their well. It is the responsibility of the private well owner to take steps to have his or her water quality tested at least annually for possible constituents of concern—or more often if the well is thought to have a surface water connection. Please see <http://wellowner.org/water-quality/water-testing/> for more information about testing private water wells. If your well tests positive for fecal coliform bacteria, please see the Texas A&M AgriLife Extension publication titled “What to Do About Coliform Bacteria in Well Water” at <https://twon.tamu.edu/wp-content/uploads/sites/3/2021/06/what-to-do-about-coliform-in-well-water.pdf> or the TCEQ publication titled “Disinfecting Your Private Well” at <https://www.tceq.texas.gov/downloads/drinking-water/preparedness-resources/gi-432.pdf> for more information.

**Comment: 7:**

Tom Wallis Airhart expressed concerns about recreational crawfishing in the adjacent pond.

**Response 7:**

The ability of the public to recreate in the waters of Texas is given significant consideration in the review of an application for, and the decision to issue a wastewater discharge permit. All waterbodies in the state are considered as having primary contact recreational use, which includes activities that are presumed to involve a significant risk of ingestion of water. These activities are defined by the Texas Parks and Wildlife Code § 66.115, and unless otherwise specified in the TSWQS, these activities include wading by children, swimming, water skiing, diving, tubing, surfing, hand-fishing, and whitewater activities like kayaking, canoeing, and rafting.

The Tier 1 Antidegradation review conducted by the Standards Team during the ED’s Technical review indicates that the existing uses of the receiving streams, including primary contact recreation, will be maintained and protected from discharges made in compliance with the proposed permit. The proposed permit was developed according to the TSWQS and the TCEQ IPs to be protective of water quality and maintain the recreational uses of the waterbodies in the route of the proposed discharge, provided that the Applicant operates and maintains the proposed facility according to TCEQ rules and the proposed permit’s requirements.

The proposed permit considers recreational uses of each receiving water body during review. The receiving streams are presumed to have primary contact recreational uses which include swimming, boating, fishing, and incidental ingestion. Recreational uses are protected with a bacteria limit typically. The permit received an end-of-pipe bacteria limit of 126 colony forming units (CFU) to ensure the use and enjoyment of the receiving streams.

**Comment 8:**

Tom Wallis Airhart expressed concerns how the stormwater runoff will be handled.

**Response 8:**

The draft permit authorizes the discharge of treated effluent from a wastewater treatment system. Wastewater treatment facilities that have a design flow of 1.0 MGD or greater are required to obtain stormwater permit coverage under the Multisector General

Permit TXR050000 or an individual permit. TCCI Montgomery Gardens, LLC has applied to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.15 MGD. Based on the design flow for this facility, stormwater permit coverage is not required.

**Comment 9:**

Tom Wallis Airhart expressed concerns about a Type II Reclaimed Water. He mentioned Type II Reclaimed Water cannot be used for recreational lakes or lakes that supply drinking water.

**Response 9:**

Type II reclaimed water authorization is required to use municipal reclaimed water in areas where there is a low potential for public exposure. This includes remote, restricted, controlled, and limited-access areas where human contact is unlikely.

The TCEQ's rules applicable to the beneficial reuse of reclaimed water are found in 30 TAC Chapter 210. In order for an applicant to obtain this authorization, the TCCI Montgomery Gardens must first have a Texas Pollutant Discharge Elimination System (TPDES) permit or a no-discharge Texas Land Application (TLAP) state permit.<sup>8</sup> TCEQ's rules provide that use of reclaimed water may only be authorized for "on a demand" use, which prevents treated water from being provided during times it cannot be beneficially used and allows the reclaimed water user to refuse delivery of reclaimed water at any time.<sup>9</sup> Subsequently, the reclaimed water producer must have a guaranteed method of effluent disposal via either a TPDES or TLAP permit. The TCEQ does not have the authority to require a permittee to obtain a Chapter 210 reuse authorization.

If the permit is issued, TCCI Montgomery Gardens will have to notify the Executive Director that it intends on using the reclaimed water and obtain approval to provide reclaimed water.<sup>10</sup> Treated effluent that is used for irrigation under a reuse authorization must meet the appropriate effluent limits as required by 30 TAC Chapter 210.

**Comment 10:**

Lauren J. Kalisek (on behalf of North Texas Municipal Water District) expressed concerns about the drinking water availability for this development.

**Response 10:**

The TCEQ does not have the authority to address these types of issues as part of the wastewater permitting process. While the Texas Legislature has given the TCEQ the responsibility to protect water quality, the water quality permitting process is limited to controlling the discharge of pollutants into or adjacent to water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters.

Drinking water availability is not under the authority of the TCEQ to consider when evaluating a wastewater discharge permit action. For information on drinking water availability, please call the TCEQ's Office of Water, Water Availability Division at

---

<sup>8</sup> 30 TEX. ADMIN. CODE § 210.5(a).

<sup>9</sup> 30 TEX. ADMIN. CODE § 210.7.

<sup>10</sup> 30 Tex. Admin. Code § 210.4.

(512) 239-4600. For general information on groundwater, please contact the Texas Water Development Board at (512) 463-7847.

**Comment 11:**

Lauren J. Kalisek expressed concern about water quality degradation of the receiving water.

**Response 11:**

The Texas Water Quality Standards in 30 TAC § 307.5 require that discharges may not degrade the receiving waters, and may not result in situations that impair existing, attainable or designated uses. Further, surface waters may not be toxic to man, or to terrestrial or aquatic life 30 TAC § 307.6(b). The effluent limits in the draft permit are set to maintain and protect the existing instream uses.

In this permit application, the receiving stream uses are primary contact recreation, public water supply, and high aquatic life use. The Executive Director determined that these uses should be protected if the facility is operated and maintained as required by the proposed permit and regulations. Additionally, the treated effluent will be disinfected prior to discharge to protect human health.

In accordance with 30 Texas Administrative Code § 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 Lake Lavon, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

New TPDES permits, as well as amendments to TPDES permits, that allow increased pollution loading in a water body are subject to review under Tier 1 of the TCEQ's antidegradation policy found in section 307.5 of the Standards; all pollution that could cause an impairment of existing uses is included in the evaluation. The ED's Tier I antidegradation review ensures existing water quality uses are not impaired by increases in pollution loading. Numerical and narrative criteria necessary to protect existing uses must be maintained. New and amended TPDES permits that allow an increase in loading are also subject to review under Tier II of the antidegradation policy. A Tier II antidegradation review generally applies to water bodies that have existing, designated, or presumed uses of intermediate, high, or exceptional aquatic life use. The ED's Tier II antidegradation review ensures that where water quality exceeds the normal range of fishable/swimmable quality, the water quality will be maintained, unless lowering it is necessary for important economic or social development.

The extensive technical reviews performed by the TCEQ's Standards Implementation Team, Water Quality Assessment Team, and Municipal Permits Team resulted in permit effluent limits that will ensure the proposed discharge is consistent with applicable laws, including the Standards' antidegradation policy and designated and presumed use requirements, and other requirements. Therefore, the draft permit is expected to be protective of the receiving water uses.

Finally, the draft permit specifically prohibits the unauthorized discharge or wastewater or other waste and requires TCCI Montgomery Gardens to take all reasonable

steps to minimize or prevent discharges or other permit violations that would adversely affect human health or the environment.

**Comment 12:**

Lauren J. Kalisek requested to include the Total Phosphorus limit in the draft permit that adequately comply with the TCEQ regulations and state water quality standards.

**Response 12:**

The applicant initially requested effluent limitations, based on a 30-day average, of 10 mg/l CBOD<sub>5</sub>, 10 mg/l TSS, 5.0 mg/l NH<sub>3</sub>-N, 1.0 mg/l TP, 126 CFU or MPN of *E. coli* per 100 ml and 5.0 mg/l minimum DO. However, due to multiple protesting public comments received after the notice publication, the applicant voluntarily committed to maintaining higher effluent quality standards for the facility, which is, based on a 30-day average, of **5.0 mg/l CBOD<sub>5</sub>, 5.0 mg/l TSS, 2.0 mg/l NH<sub>3</sub>-N, 1.0 mg/l TP**, 126 CFU or MPN of *E. coli* per 100 ml and 5.0 mg/l minimum DO. Therefore, the draft permit has a total phosphorus limit of 1.0 mg/L.

**CHANGES MADE TO THE PERMIT IN RESPONSE TO COMMENT**

No changes to the draft permit have been made in response to public comments.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Executive Director

Charmaine Backens, Deputy Director  
Environmental Law Division



---

Anthony Tatu , Staff Attorney  
Environmental Law Division  
State Bar No. 00792869  
P.O. Box 13087, MC 173  
Austin, Texas 78711 3087  
Telephone No. 512-239-5778  
Facsimile No. 512-239-0626

REPRESENTING THE EXECUTIVE DIRECTOR  
OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY