

TCEQ Docket No. 2023-1430-MWD

**Petition by Catalaunian, LLC to
Involuntarily Transfer or Revoke, or
Revoke and Reissue TPDES Permit
No. WQ0015843001**

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**Before the
Texas Commission on
Environmental Quality**

**Executive Director's Response to Catalaunian LLC's Petition to Involuntarily
Transfer or Revoke, or Revoke and Reissue Permit No. WQ0015843001**

I. Introduction

The Executive Director (ED) files this response to Protestant Catalaunian LLC's (Catalaunian) Petition to Involuntarily Transfer or Revoke, or Revoke and Reissue TPDES Permit No. WQ0015843001. The ED opposes the petition and recommends that the Commission deny Catalaunian's request.

II. Facts

Original Application

Under the original permit application dated December 10, 2019, the original permittee, Kali Kate Services Inc. (Kali Kate), represented to the ED that it owned the property on which the facility was to be located. At the April 28, 2021, agenda meeting, the Commission determined there was one affected person and referred the following issue to the State Office of Administrative Hearings (SOAH): Whether the draft permit contained sufficient provisions to prevent nuisance odors. At the preliminary hearing, at Kali Kate's request, the SOAH judge remanded the case to the ED pursuant to 30 Texas Administrative Code (TAC) § 80.101. On September 10, 2021, the ED issued Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015843001 to Kali Kate. On January 9, 2023, Aguilas Robles LLC (Aguilas) filed an application to transfer the permit from Kali Kate to Aguilas. On February 8, 2023, the ED approved the transfer to Aguilas. Catalaunian states that as of the original December 2019 application date, the record landowner of the proposed Westridge Oaks Wastewater Treatment Facility site was Hunter Creek Enterprises LP, not Kali Kate. The wastewater treatment facility has not been constructed.

Kali Kate represented to the ED in its December 2019 application that it owned the property, and this issue was not contested. The ED's standard practice is to rely on

the representations made in the application as complete and accurate. Based on the representations made by Kali Kate, the ED issued the permit.

Amendment Application

On March 1, 2023, Aquilas submitted an application for a major amendment to TPDES Permit No. WQ0015843001. The requested amendment to the permit includes a change in the locations of both the outfall and the facility. According to the major amendment application, Aquilas owns the property on which the facility will be located. Aquilas provided additional information to staff, including a map, title and lien search, perimeter description, and Warranty Deed, demonstrating its property interest in the facility site.

III. Catalaunian's Petition

Petition to Transfer

Catalaunian's Petition requests that TCEQ involuntarily transfer TPDES Permit No. WQ0015843001 to Catalaunian pursuant to 30 TAC § 305.64(i). After reviewing Catalaunian's Petition, the ED does not find that Catalaunian has demonstrated that an involuntary transfer is appropriate because involuntary transfers are intended to apply to entities that fail to comply with the terms of a permit to minimize or eliminate damage resulting from noncompliance.

The intent of 30 TAC § 305.64(i) is to give TCEQ the authority to transfer a permit from a permittee who failed to follow the permit's conditions. The following was stated in the preamble to 30 TAC § 305.64:

If an existing permittee cannot or will not comply with a permit, the commission may transfer a permit involuntarily after notice and an opportunity for hearing. When a permit holder has failed to comply with a permit's terms, damage to the environment can be minimized or eliminated by transferring the permit to an operator who can meet all the permit requirements.

14 Tex. Reg. 3297 (July 4, 1989).

There is no evidence to suggest that Aguilas will not comply with the terms of the permit because the facility has not yet been constructed, Aguilas does not own or operate another facility and has a compliance history of unclassified.

One of the nine reasons listed in 30 TAC § 305.64(i) as a basis for the Commission to involuntarily transfer a permit is if the facilities have not been built and the permittee no longer has sufficient property rights in the site of the proposed facilities. As noted above, Aguilas has filed an application for a major amendment to TPDES Permit No. WQ0015843001. This application requests that the location of the proposed wastewater treatment facility and outfall be moved. The major amendment application, if granted, addresses this issue under 30 TAC § 305.64(i). The Commission may involuntarily transfer a permit if the facilities have not been built and the permittee no longer has sufficient property rights. 30 TAC § 305.64(i)(2). In this case, the plant has not been constructed and Aguilas has applied to move the locations of the plant and outfall. If the application is granted, that would negate this reason for involuntary transfer.

Aguilas has not constructed the wastewater facility, and there is no evidence to suggest that it will not comply with the terms of the permit. There are nine discretionary reasons listed in 30 TAC § 305.64(i) for which the Commission may transfer a permit involuntarily; however, Catalaunian's Petition to Transfer does not demonstrate that Commission action pursuant to any of these scenarios is appropriate in this case. As a result, the ED recommends denial of the petition to transfer.

Petition to Revoke

Catalaunian alternatively requests that the Commission revoke TPDES Permit No. WQ0015843001. The Commission may revoke a permit for good cause. 30 TAC § 305.66(a). Before revoking a permit, the Commission must find that a violation or violations are significant and that the permit holder or applicant has not made a substantial attempt to correct violations. 30 TAC § 305.66(g). Catalaunian does not demonstrate that Aguilas has committed a significant violation and has not made a substantial attempt to correct the violation. If Aguilas committed a violation with regard to the location of the facility, its amendment application is a substantial attempt to correct its violation. As a result, the ED recommends denial of the petition to revoke.

IV. ED Relies on Applicant's Representations

The ED's long-standing practice is to rely on representations made in a permit application. Kali Kate represented to the ED that it owned the property, and the issue of land ownership was not contested. Further, when Aguilas submitted the transfer application, it represented to the ED that it owned the property. Pursuant to the TCEQ's practice, the permit and transfer were granted. Aguilas has represented to the ED and has provided documentation demonstrating that it owns the property on which the proposed facility will be located should Aguilas' amendment application be granted.

Catalaunian compares this case to the Stephen Selinger case (SOAH Docket No. 582-22-1885). In the Selinger case, the application for a TPDES permit was denied following a contested case hearing at SOAH because the evidence in the case demonstrated that Selinger, the applicant, did not own the property on which the facility was to be located at the time the application was filed after he had represented to the ED that he was the current owner. The issue of land ownership regarding the Selinger application was contested prior to permit issuance. In contrast, Aguilas has represented to the ED in the major amendment application that it owns the property on which the facility will be located and has provided documentation demonstrating ownership.

V. Conclusion

The ED respectfully requests that the Commission deny Catalaunian's Petition to Involuntarily Transfer or Revoke, or Revoke and Reissue TPDES Permit No. WQ0015843001. While the ED is always concerned whenever there is a question of land ownership regarding the location of a proposed wastewater treatment facility, the facts in this case do not warrant further action on Catalaunian's Petition.

Respectfully submitted,

TEXAS COMMISSION ON
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