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Kelly Keel, *Interim Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 10, 2023

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

**RE: IN THE MATTER OF THE PETITION BY CATALAUNIAN LLC
REQUESTING TRANSFER OR REVOCATION OF
PERMIT NO. WQ0015843001 ISSUED TO AGUILAS ROBLES, LLC
TCEQ DOCKET NO. 2023-1430-MWD**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Petition to Involuntarily Transfer or Revoke in the above-entitled matter.

Sincerely,


Eli Martinez, Senior Attorney
Assistant Public Interest Counsel

cc: Mailing List

TCEQ DOCKET NO. 2023-1430-MWD

**PETITION BY CATALAUNIAN LLC § BEFORE THE TEXAS
REQUESTING TRANSFER OR §
RECOVACTON OF PERMIT NO. § COMMISSION ON
WQ0015843001 ISSUED TO §
AGUILAS ROBLES, LLC § ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE TO
PETITION TO INVOLUNTARILY TRANSFER OR REVOKE**

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (the Commission or TCEQ) and files this response to petition to involuntarily transfer or revoke (the Petition) filed by Catalaunian LLC (Catalaunian or Petitioner) in the above-referenced matter.

I. BACKGROUND

On December 10, 2019, original permittee Kali Kate Services, Inc. (Kali Kate) applied for Water Quality Permit No. WQ0015843001 authorizing the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day (gpd) in the interim phase and a daily average flow not to exceed 34,300 gpd in the final phase for a wastewater treatment plant to be located at 6281 FM 1102, New Braunfels, Comal County. The application stated the wastewater treatment facility was intended to serve the proposed Westridge Oaks subdivision. The Commission issued this permit on September 10, 2021.

On January 9, 2023, Kali Kate filed an application to transfer (Transfer Application) this permit to Aguilas Robles, LLC (Aguilas) that

contained certifications from Manager of Aguilas Joshua Majors and President of Kali Kate David Tidwell affirming that the application was true, correct, and complete. The permit transfer was approved by the Commission on February 27, 2023.

II. PETITION TO REVOKE PERMIT NO. WQ0015843001

On October 5, 2023, Catalaunian petitioned the TCEQ to involuntarily transfer or revoke Permit No. WQ0015843001. Petitioner argues that the permit should be revoked or involuntarily transferred to itself because Kali Kate and Aguilas made false or misleading representations—or, at a minimum, failed to disclose fully all relevant facts with respect to property ownership in both the original and Transfer Application.

Specifically, Petitioner alleges Kali Kate falsely claimed in its original application that it was the owner of the property located at 6281 FM 1102 (the Westridge Oaks Tract), where the proposed wastewater treatment plant was to be built, and falsely claimed that it held an easement necessary to meet buffer zone requirements. However, according to the Petition, Kali Kate had no ownership interest in this property, held no lease for said property, and did not have a deed-recorded easement on the property. In fact, Petitioner states that no record of Kali Kate ever owning

any property or easements exists in the Comal County records whatsoever.¹

The Petition argues these misrepresentations are relevant to the current permit holder because Aguilas falsely represented and certified in the Transfer Application that it was the owner of the Westridge Oaks Tract, the site of the proposed wastewater treatment plant in the permit. At this time, Petitioner was the actual owner of said property. Because notice is not required for a transfer of a permit under TCEQ's rules, the Petitioner was not given notice or an ability to contest the Transfer Application or its false and misleading representations. Petitioner only become aware of the transfer due to a pending application by Aguilas for a major amendment to move the site of the wastewater treatment plant onto Aguilas' property, which lies adjacent to the Petitioner's property. Construction of the proposed facilities has not commenced.

III. APPLICABLE RULES

A. Permit Revocation

A permit or other order of the commission does not become a vested right and may be suspended or revoked for good cause at any time by order of the commission after opportunity for a public hearing is given.² Good cause for revocation includes the permittee's failure in the application or

¹ *Catalaunian LLC's Petition for the Commission to Involuntarily Transfer or Revoke and Reissue Permit No. WQ0015843001 from Aguilas Robles LLC to Catalaunian LLC* at Page 3, Paragraph 6.

² 30 Texas Administrative Code (TAC) § 305.66(a).

hearing process to disclose fully all relevant facts, or the permittee's misrepresentation of relevant facts at any time.³

Additionally, the Commission may revoke an original permit if the Commission finds after notice and hearing that the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the commission, its officers, or its employees.⁴

Revocation of a permit may be requested by a person affected by the issuance of a permit or other order of the Commission.⁵ Affected persons may initiate proceedings for revocation or suspension by forwarding a petition to the Executive Director to be filed with the Commission.⁶ In the absence of a request filed by the permittee or of sufficient consent and waiver, the Commission shall conduct a public hearing on a petition to revoke or suspend a permit or other order of the Commission.⁷

B. Involuntary Transfer

The Commission has authority to transfer a permit involuntarily after notice and an opportunity for hearing for any of a series of enumerated reasons, including, if the facilities have not been built, the

³ 30 TAC § 305.66(a)(4); *see also* Texas Water Code § 7.302(b)(5).

⁴ 30 TAC § 305.66(f)(3).

⁵ 30 TAC § 305.66(d).

⁶ *Id.*

⁷ 30 TAC § 305.68(a).

permittee no longer has sufficient property rights in the site of the proposed facilities.⁸

The Commission also has the authority to transfer permits to an interim permittee pending an ultimate decision on a permit transfer if it finds that 1) the permittee no longer owns the permitted facilities; 2) the permittee is about to abandon or cease operation of the facilities; 3) the permittee has abandoned or ceased operating the facilities; and 4) there exists a need for the continued operation of the facility and the proposed interim permittee is capable of assuming responsibility for compliance with the permit.⁹

IV. DISCUSSION

A. Permit Revocation

As a preliminary matter, in order to petition for the revocation of a permit, the petition must be brought by a person affected by the issuance of a permit or other order of the commission.¹⁰ OPIC finds that Petitioner is affected by the permit because it is an adjacent landowner and the owner of the location where the permitted facilities are currently authorized. Petitioner is therefore impacted by the regulated activity and is personally affected by the issuance of the permit.

⁸ 30 TAC § 305.64(i).

⁹ 30 TAC § 305.64(h).

¹⁰ 30 TAC § 305.66(d).

As to the Petition's allegation that Aguilas misrepresented a material fact or made a false or misleading statement in connection with the Transfer Application, Aguilas contends that they responded accurately by identifying themselves as landowner in Section 7 of Transfer Application Form TCEQ-20031, which requests identification of the "landowner where the facility is or will be located," because it intended to file a subsequent amendment to locate the proposed facilities on its own property.¹¹ Therefore, Aguilas answered as to their intention where the facility "will be located" rather than what was then-designated in the permit. OPIC finds the "will be" clause more likely refers to unbuilt facilities authorized to be constructed at the site indicated in the permit than what lies in the mind of an applicant that may result from a future, unapproved major amendment. Falsely claiming ownership of the site where the permit authorized the construction of the proposed wastewater treatment plant may constitute good cause for permit revocation. Therefore, OPIC recommends the Commission refer the matter to the State Office of Administrative Hearings (SOAH) to allow the interested parties an opportunity to present evidence on whether there is good cause to revoke Permit No. WQ0015843001.

B. Involuntary Transfer

The Commission may transfer a permit involuntarily after notice

¹¹ *Aguilas Robles, LLC's Response to Catalaunian LLC's Petition Requesting Involuntary Transfer or Revocation and Reissuance of Permit to Petitioner*, at Page 5.

and an opportunity for hearing where the permittee no longer has sufficient property rights in the site of unbuilt proposed facilities.¹² The site of the unbuilt facilities in the unamended permit is owned by Petitioner rather than Aguilas. Therefore, OPIC recommends the Commission refer the matter to the SOAH to allow the interested parties an opportunity to present evidence on whether there is good cause to involuntarily transfer Permit No. WQ0015843001.

The commission may transfer permits to an interim permittee pending an ultimate decision on a permit transfer if it finds 1) the permittee no longer owns the permitted facilities; 2) the permittee is about to abandon or cease operation of the facilities; 3) the permittee has abandoned or ceased operating the facilities; and 4) there exists a need for the continued operation of the facility and the proposed interim permittee is capable of assuming responsibility for compliance with the permit.¹³ There are currently no built facilities to own, operate, or abandon, and therefore no need for an interim permittee to effectuate continued operations. Further, OPIC agrees with Aguilas that there is no evidence Petitioner is capable of assuming responsibility for compliance with the permit.¹⁴ OPIC therefore recommends the Commission deny the request to appoint Petitioner as an interim permittee.

¹² 30 TAC § 305.64(i).

¹³ 30 TAC § 305.64(h).

¹⁴ *Aguilas Robles, LLC's Response to Catalaunian LLC's Petition Requesting Involuntary Transfer or Revocation and Reissuance of Permit to Petitioner*, at Page 3.

V. ISSUES RECOMMENDED FOR REFERRAL

Because there may be conflicting facts within the record, OPIC recommends the following issues be referred to SOAH for a contested case hearing:

1. Did Aguilas fail to fully disclose all relevant facts, misrepresent relevant facts, or make a false or misleading statement by representing that they were the landowner where the facility is or will be located in the application materials sufficient to revoke Permit No. WQ0015843001?
2. Does Aguilas hold sufficient property rights in the site of unbuilt proposed facilities for the Commission to order the involuntary transfer of Permit No. WQ0015843001 to another permittee?

VI. CONCLUSION

OPIC recommends the Commission find that Petitioner is an affected person and refer this matter to SOAH for the parties to present evidence on the two issues stated above.

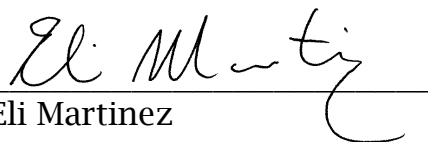
Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

By: 
Eli Martinez
Assistant Public Interest Counsel
State Bar No. 24056591
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-6363 Phone

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2023, the original of the Office of Public Interest Counsel's Response to Petition to Involuntarily Transfer or Revoke was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.


Eli Martinez

Mailing List
Catalaunian LLC
TCEQ Docket No. 2023-1430-MWD

Counsel for Catalaunian LLC

Paul C. Sarahan
Earth & Water Law, LLC
1445 Pennsylvania Ave., NW, Suite 400
Washington D.C., 20004
512/971-4156
psarahan@enochkever.com

Counsel for Aguilas Robles, LLC

Helen Gilbert
Barton Benson Jones PLLC
7000 N. Mopac Expy, Suite 200
Austin, Texas 78731
210/610-5335 Direct:210/640-9174
hgilbert@bartonbensonjones.com

Counsel for Executive Director

Aubrey Pawelka
Todd Galiga
TCEQ Environmental Law Division MC 173
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0600 FAX 512/239-0606
Aubrey.Pawelka@tceq.texas.gov
Todd.Galiga@tceq.texas.gov

Garrett Arthur
Eli Martinez
TCEQ Office of Public Interest Counsel MC 103
P.O. Box 13087
Austin, Texas 78711-3087
512/239-6363 FAX 512/239-6377
Garrett.arthur@tceq.texas.gov
Eli.martinez@tceq.texas.gov

Docket Clerk
TCEQ Office of Chief Clerk MC 105
P.O. Box 13087
Austin, Texas 78711-3087
512/239-3300 FAX 512/239-3311
<https://www14.tceq.texas.gov/epic/efiling/>

Ryan Vise
TCEQ External Relations Division MC 118
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0010 FAX 512/239-5000
pep@tceq.texas.gov

Kyle Lucas
TCEQ Alternative Dispute Resolution MC 222
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0687 FAX 512-239-4015
Kyle.lucas@tceq.texas.gov