

DOCKET NO. 2023-1564-MWD

APPLICATION BY	§	BEFORE THE
AGUILAS ROBLES, LLC	§	
FOR MAJOR AMENDMENT TO	§	TEXAS COMMISSION ON
TPDES PERMIT	§	
NO. WQ0015843001	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

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 Aguilas Robles, LLC (Applicant) seeking a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0015843001 and the Executive Director's preliminary decision. The Office of the Chief Clerk received a contested case hearing request from Paul Sarahan on behalf of Catalaunian, LLC.

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

II. Description of Facility

Aguilas has applied for a major amendment to TPDES Permit No. WQ0015843001 to authorize the relocation of both the outfall and the facility, and to increase the discharge of treated domestic wastewater from a daily average flow not to exceed 34,300 gallons per day (gpd) to a daily average flow not to exceed 600,000 gpd. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gpd in the Interim phase and 34,300 gpd in the Final phase. The proposed wastewater treatment facility will serve a single-family residential subdivision in New Braunfels.

The facility will be an activated sludge process plant operated in the extended aeration mode. Treatment units in the Interim I phase will include bar screens, an aeration basin, a final clarifier, a sludge digester, a chlorine contact chamber, and filtration. Treatment units in the Interim II phase will include bar screens, two aeration basins, two final clarifiers, two sludge digesters, two chlorine contact chambers, and filtration. Treatment units in the Final phase will include bar screens, three aeration basins, three final clarifiers, three sludge digesters, three chlorine contact chambers, filtrations, and dechlorination. The facility has not been constructed.

The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.10 million gallons per day (MGD) in the Interim I phase, 0.20 MGD in the Interim II phase, and 0.60 MGD in the Final phase. The effluent limitations in the Interim I, Interim II, and Final phases of the draft permit, based on a 30 day average, are 5 milligrams per liter (mg/l) five-day carbonaceous biochemical oxygen demand (CBOD₅), 5 mg/l total suspended solids (TSS), 2 mg/l ammonia-nitrogen (NH₃-N), 0.5 mg/l Total Phosphorus, 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).

In the Interim I and II phases of the draft permit, 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. In the Final phase of the draft permit, 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.

According to the existing permit, the proposed Westridge Oaks Wastewater Treatment Facility was to be located approximately 0.3 miles northeast of the intersection of Farm-to-Market Road 1102 and Havenwood Boulevard, in Comal County, Texas 78130. According to the draft permit, the facility will be located approximately 0.68 miles northwest of the intersection of Watson Lane and Farm-to-Market Road 1102, in Comal County, Texas 78132.

The discharge route in the existing permit is via pipe to an unnamed tributary of Water Hole Creek, thence to Water Hole Creek, thence to Soil Conservation Service (SCS) Site 3 Reservoir, thence to Water Hole Creek, thence to York Creek, thence to the Lower San Marcos River. The discharge route in the draft permit is to an unnamed tributary of York Creek, thence to York Creek, thence to Lower San Marcos River in Segment No. 1808 of the Guadalupe River Basin.

The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary and limited aquatic life use for York Creek. The designated uses for Segment No. 1808 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code (TAC) § 307.5 and *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. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream; and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

III. Procedural Background

The TCEQ received Aguilas Robles, LLC's application for a major amendment TPDES permit on March 17, 2023, and declared it administratively complete on March 29, 2023. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English in the *Herald-Zeitung Newspaper* on April 9, 2023, and in Spanish in the *El Mundo Newspaper* on April 6, 2023. The application was determined technically complete on May 15, 2023. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in English in the *Herald-Zeitung Newspaper* on June 14, 2023, and in Spanish in the *El Mundo Newspaper* on June 15, 2023. The comment period for this application closed on July 17, 2023.

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).

Catalaunian 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 a person with what it believed to be personal justiciable interests affected by the application, which will be discussed in greater detail below, and provided a disputed issue of fact raised during the public comment period.

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

B. Whether the Requestor Meets the Affected Persons Requirements.

Catalaunian, LLC

Original application

Under the original application dated November 2019, Kali Kate represented to the Executive Director that it owned the property on which the facility was to be located. On January 9, 2023, Aguilas filed an application to transfer the permit from Kali Kate to Aguilas. On February 8, 2023, TCEQ issued the transfer to Aguilas. Catalaunian states that as of the original November 2019 application date, the record landowner of the proposed Westridge Oaks Wastewater Treatment Facility site was Hunter Creek Enterprises LP, not Kali Kate. The facility was never constructed.

Kali Kate represented to the Executive Director in its November 2019 application that it owned the property, and the issue was not contested. The ED's standard practice is to rely on the representations made in the application as complete and accurate. Thus, the existing permit was issued.

Amendment application

According to the application submitted by Aguilas, it owns the property on which the facility will be located. The amendment to the permit includes a change in the locations of both the outfall and the facility. Aguilas 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.

Affectedness determination

According to its hearing request, Catalaunian owns the property on which the proposed facility will be located, and Aguilas has no property interest in the property on which the facility will be located or in Comal County. Catalaunian requests that TCEQ (1) require Aguilas to provide proof of property ownership, (2) deny and return the major amendment to Aguilas, and (3) transfer the permit to Catalaunian or void the permit based on the failure of either Kali Kate or Aguilas to have property ownership.

Catalaunian is listed on the affected landowners' map. However, based on the application and additional materials provided by Applicant, the facility site and discharge point requested in the amendment application are not on Catalaunian's property. The only issue raised by Catalaunian is the issue of property ownership by Applicant. Because the available information demonstrates that the property to be used for the proposed facility and discharge point are owned by the applicant, the hearing request fails to show how Catalaunian has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application that is not common to members of the general public and, therefore, is not an affected person.

The Executive Director recommends the Commission find that Catalaunian, LLC is not an affected person.

C. Whether Issue Raised Is Referable to SOAH for a Contested Case.

The following issue was raised during the public comment period.

1. Whether the Applicant has a valid property interest in the land on which the proposed facility will be located. (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 Applicant does not have a valid property interest in the land on which the proposed facility will be located, that information would be relevant and material to a decision on the application.

Should the Commission refer this matter to SOAH, the Executive Director recommends referring this issue to SOAH.

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. Request for Reconsideration/Rehearing Analysis

The Chief Clerk received a timely Request for Reconsideration (RFR) from Paul Sarahan on behalf of Catalaunian, LLC. As required by 30 Texas Administrative Code § 55.201(e), Mr. Sarahan gave his request in writing, and provided his name, address, and daytime telephone number. Mr. Sarahan specifically requested reconsideration of the ED's decision on the Aguilas Robles, LLC application.

The issue brought up by Catalaunian was whether the Applicant has a valid property interest in the land on which the proposed facility will be located (RTC Response No.1). This issue was considered during the ED's review of the application. The RFR did not provide any new information that would lead the ED to change his recommendation on the application; therefore, the ED recommends denial of the RFR.

VIII. Conclusion

The Executive Director recommends the following actions by the Commission:

Find Catalaunian, LLC not an affected person and deny its hearing request.

Deny Catalaunian, LLC's request for reconsideration.

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
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IX. CERTIFICATE OF SERVICE

I certify that on January 29, 2024, the “Executive Director’s Response to Hearing Requests” for major amendment to Texas Pollutant Discharge Elimination System (TPDES) No. WQ0015843001 by Aguilas Robles, 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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TCEQ Docket No./TCEQ Expediente N.º 2023-1564-MWD
Permit No./Permiso N.º WQ0015843001

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Attachment A

Aguilas Robles (WQ0015843001)

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



*Protecting Texas by
Reducing and
Preventing Pollution*

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Date: 1/22/2024
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Cartographer: jbartlin



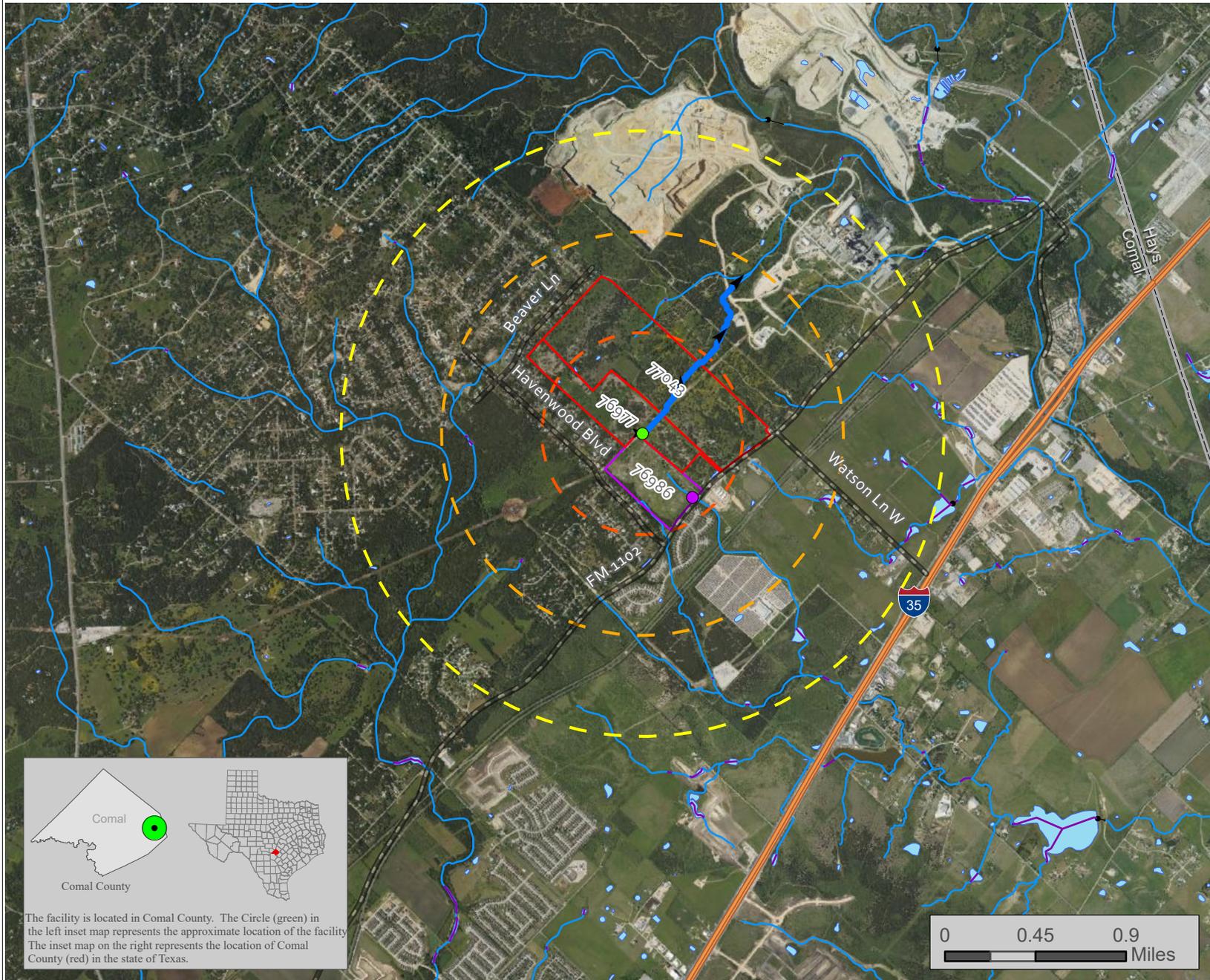
- Requestor
- Requestor Property Boundary
- Aguilas Robles Property Boundary
- Facility Outfall
- 1.0 Mile Discharge
- 0.5 Mile Outfall Radius
- 1.0 Mile Outfall Radius
- 1.5 Mile Outfall Radius

The Aguilas Robles LLC property boundaries are property IDs 77043 and 76977.

The Catalaunian LLC property boundary is property ID 76986.

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.



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

