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Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 29, 2024

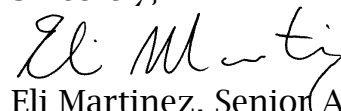
Laurie Gharis, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk (MC-105)  
P.O. Box 13087  
Austin, Texas 78711-3087

RE: **IN THE MATTER OF THE APPLICATION BY AGUILAS ROBLES,  
LLC FOR TPDES PERMIT NO. WQ0015843001  
TCEQ DOCKET NO. 2023-1564-MWD**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Request for Reconsideration and Requests for Hearing and in the above-entitled matter.

Sincerely,

  
Eli Martinez, Senior Attorney  
Public Interest Counsel

cc: Mailing List

**TCEQ DOCKET NO. 2023-1564-MWD**

**IN THE MATTER OF THE  
APPLICATION BY AGUILAS  
ROBLES, LLC FOR WATER QUALITY  
PERMIT NO. WQ0015843001**

**BEFORE THE TEXAS COMMISSION  
ON  
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO REQUEST FOR  
RECONSIDERATION AND REQUESTS FOR HEARING**

To the Honorable Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Request for Reconsideration and Requests for Hearing in the above-referenced matter and respectfully shows the following.

**I. Introduction**

**A. Summary of Position**

Based on the information submitted in the requests and a review of the information available in the Chief Clerk's file on this application, OPIC recommends the Commission deny the request for reconsideration of Catalaunian, LLC (Catalaunian or Requestor). Aguilas has indicated that it owns the property on which the facility is proposed to be located in the permit amendment, and there is no evidence to the contrary contained in the record.

Further, OPIC recommends the Commission deny Catalaunian's hearing requests. Requestor has not expressed a personal justiciable interest sufficient to demonstrate that they are an affected person under the Commission's rules.

## **B. Description of Facility**

Aguilas Robles, LLC (Aguilas or Applicant) has applied for a major amendment to TPDES Permit No. WQ0015843001 to authorize the relocation of the outfall and facility location, 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 would serve a single-family residential subdivision in New Braunfels.

The facility would be an activated sludge process plant operated in the extended aeration mode. Treatment units in the Interim I phase would 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 would include bar screens, two aeration basins, two final clarifiers, two sludge digesters, two chlorine contact chambers, and filtration. Treatment units in the Final phase would 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 (CBOD<sub>5</sub>), 5 mg/l total suspended solids (TSS), 2 mg/l ammonia-nitrogen (NH<sub>3</sub>-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 must 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 must 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 must dechlorinate the chlorinated effluent to less than 0.1 mg/l total chlorine residual.

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

The discharge route in the existing permit is via pipe to an unnamed tributary of Water Hole Creek, then to Water Hole Creek, then to Soil Conservation Service (SCS) Site 3 Reservoir, then to Water Hole Creek, then to York Creek, then to the Lower San Marcos River. The discharge route in the

draft permit is to an unnamed tributary of York Creek, then to York Creek, then 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 § 307.5 and TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), the Executive Director (ED) performed an antidegradation review of the receiving waters. A Tier 1 antidegradation review preliminarily determined that existing water quality uses will not be impaired by this permit action. The review further 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 antidegradation review was performed.

### **C. Procedural Background**

The TCEQ received Aguilas' 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 *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

*El Mundo* newspaper on June 15, 2023. The comment period for this application closed on July 17, 2023. The ED's Response to Comments was mailed on September 5, 2023. The hearing request period ended October 6, 2023.

Timely requests for reconsideration and a contested case hearing were filed by Catalaunian.

## **II. REQUEST FOR RECONSIDERATION**

### **A. Applicable Law**

Any person may file a request for reconsideration of the ED's decision under 30 TAC § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the ED's decision and RTC. The request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be reconsidered.

### **B. Discussion**

A timely request for reconsideration of the ED's decision was filed by Catalaunian. Catalaunian requests reconsideration of the ED's decision based on concerns related to property ownership. Catalaunian is the owner of land located at 6281 FM 1102, New Braunfels. This location is the site currently authorized in Aguilas' permit for construction of the WWTP, and directly

adjacent to the location of the site where the WWTP would be authorized to be constructed should the amendment application be granted.<sup>1</sup>

Catalaunian states that Aguilas' permit was attained through misrepresentations of property ownership initially made by the original permittee, Kali Kate, and then propagated by Aguilas in its transfer permit application. The request also argues that allowing Aguilas to change the location of the proposed WWTP to property adjacent to Catalaunian would perpetuate the Applicant's bad behavior and adversely impact Catalaunian's ability to receive authorization to construct its own WWTP on its property. This is because TCEQ's regionalization policy requires a new applicant for a wastewater treatment facility to request service from other wastewater treatment facilities within three miles. Thus, Catalaunian would be subject to Aguilas' conditions to obtain service.

While OPIC is highly concerned about any misrepresentations made to the Commission during the application process, the proposed location in the draft permit is not on Catalaunian's property at 6281 FM 1102, New Braunfels, according to the TCEQ location mapper.<sup>2</sup> Rather, as acknowledged in the request, the proposed location for the WWTP is adjacent to Catalaunian's property. The correct mechanism for addressing potential misrepresentation in the original or transfer permit, which authorized construction of facilities on Catalaunian's

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<sup>1</sup> Map Requested by TCEQ Office of Legal Services for Commissioner's Agenda, Aquilas Robles (WQ0015843001).

<sup>2</sup> <https://gisweb.tceq.texas.gov/LocationMapper/?marker=-98.056,29.798&level=18>

property, is a petition to revoke. Such a petition was already submitted by Catalaunian and denied at the Commission agenda on January 10, 2024.<sup>3</sup> This decision was based in significant part on Aguilas' efforts to correct its ownership defect by submitting this amendment application.

While 30 TAC § 305.43 requires the *owner* of the facility to submit an application unless there are special circumstances that exist that would warrant an exception, Aguilas has indicated that it does indeed own the property on which the facility would be located. OPIC therefore cannot recommend denial of the permit at this time or find that the ED erred in preliminarily approving the application. For these reasons, OPIC recommends the Commission deny Catalaunian's request for reconsideration.

### **III. Requests for Hearing**

#### **A. Applicable Law**

The Application was filed after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015). Under Title 30, TAC § 55.201(c), a hearing request by an affected person must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment which has been withdrawn, and, for applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

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<sup>3</sup> TCEQ Docket No. 2023-1430-MWD



Section 55.201(d) states that a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) 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;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised by the requestor 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 ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

Under 30 TAC § 55.203(a), 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. Relevant factors to be considered in determining whether a person is affected include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;

- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
- (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
- (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

Under § 55.203(d), to determine whether a person is an affected person for purposes of granting a hearing request for an application filed on or after September 1, 2015, the Commission may also consider the following:

- (1) the merits of the underlying application and supporting documentation in the administrative record, including whether the application meets the requirements for permit issuance;
- (2) the analysis and opinions of the executive director; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission shall grant a hearing request made by an affected person if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and that are relevant and material to the Commission's decision on the

application. Under § 55.211(c)(2)(B)-(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201(d).

#### **B. Determination of Affected Person Status**

The commission received two timely hearing requests from Catalaunian, articulating the concerns listed *supra* in Section IIB related to ownership and potential adverse impacts on Catalaunian's ability to receive authorization to construct its own WWTP on its property in the future. The requests state, and the map the ED has produced in these proceedings confirms, that Requestor's property lies directly adjacent to the property proposed in the amendment application for construction of Applicant's WWTP.

OPIC finds that, although Catalaunian lies in close proximity to the proposed facilities, the economic interest it expresses is too speculative to convey affected-person status. Additionally, there is no contention that Aguilas does not own the property where the proposed amendment would authorize construction of its WWTP, and Catalaunian asserts nothing else that could qualify as a personal justiciable interest. Requestor therefore lacks a justiciable interest to support a finding of affectedness. OPIC finds that Catalaunian is not an affected person in accordance with 30 TAC § 55.203, and recommends the hearing requests be denied.

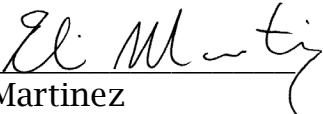
#### **IV. Conclusion**

OPIC recommends that the Commission deny the request for reconsideration and hearing requests of Catalaunian. Aguilas has indicated that

it owns the property on which the facility is proposed to be located in the permit amendment, and there is no evidence to the contrary contained in the record. Further, Catalaunian has not expressed a personal justiciable interest sufficient to demonstrate that they are an affected person under the Commission's rules.

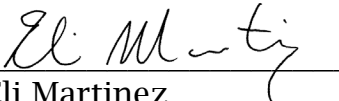
Respectfully submitted,

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### CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2024, the original of the Office of Public Interest Counsel's Response to Request for Reconsideration and Requests for Hearing was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

  
Eli Martinez

**MAILING LIST**  
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**TCEQ DOCKET NO. 2023-1564-MWD**

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