

**TCEQ DOCKET NO. 2025-0753-MIS**

<b>PETITION TO REVOKE US ECOLOGY WINNIE, LLC’S TCEQ PERMIT NOS. WDW344, WDW345, WDW346, WDW347, WDW348, WDW349 AND WDW350</b>	§ § § § § § §	<b>BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY</b>
---	---------------------------------	---

---

**REPLY BRIEF OF PIPKIN RANCH HOLDINGS, LP**

---

TO THE HONORABLE COMMISSIONERS:

Pipkin Ranch Holdings, LP (“Pipkin” or “Petitioner”) files this *Reply to the Responses to Original Petition to Revoke US Ecology Winnie, LLC’s TCEQ Permit Nos. WDW344, WDW345, WDW346, WDW347, WDW348, WDW349 AND WDW350*. In support of its Reply, Pipkin shows as follows:

**I. It is not true that settlement discussions were underway.**

US Ecology states that “[d]uring the balance of 2024 and the beginning of 2025, settlement negotiations were sporadically but continuously being undertaken by the parties to the contested case hearing.”<sup>1</sup> The term “sporadically” is a huge understatement, as there were likely no more than two brief conversations. The term “continuously” is simply wrong. The fact is that there were almost no settlement discussions, and what discussions did occur provided almost no hope that any additional discussions would be fruitful. See the Affidavit Attached hereto as Exhibit 1.

Notwithstanding, the ED and OPIC seize upon US Ecology’s mischaracterization of settlement in crafting their responses. The ED states:

The Executive Director understood that there were intermittent settlement discussions between Pipkin and US Ecology Winnie in an attempt to settle the

---

<sup>1</sup> US Ecology Response at 3.

issues in dispute arising from the contested permit application as well as a related matter in civil litigation.

ED Response at 1. OPIC also assumed that the parties were engaged in “ongoing settlement negotiations.”<sup>2</sup> As shown by the Affidavit attached as Exhibit 1, none of this is true.

US Ecology states that “The TCEQ Legal Division, OCC, and Alternative Dispute Resolution (“ADR”) office were kept apprised of those ongoing settlement discussions between the parties.”<sup>3</sup> Apparently, US Ecology has been using “mediation” to justify delay, but US Ecology made no attempt to mediate. The relevant communication, attached to Exhibit 1, is as follows:

March 5, 2025: Because the matter had been languishing for over a year, the attorney for Pipkins asks OCC for the status.

March 5, 2025: OCC responds: “This matter is currently on hold due to a request by the applicant to pursue mediation.”

March 5, 2025: Having never heard of any efforts to pursue mediation, attorney for Petitioner asks Kyle Lucas, the person responsible for TCEQ mediation, whether “Applicant reached out to you on getting mediation scheduled?” Petitioner noted that the matter “has been languishing for a year.”

March 5, 2025: TCEQ’s mediator states: “Applicant *never requested my assistance on this one (and I believe actually declined my offer of assistance)*.” (emphasis added).

---

<sup>2</sup> OPIC Response at 6.

<sup>3</sup> US Ecology Response at 3.

This email string is attached to the Affidavit at Exhibit 1. US Ecology states that on March 6 and 10, 2025 “Kyle Lucas checks in on the status and informs U.S. Ecology that everything is okay and that OCC will continue to hold back the contested case hearing if the parties are in communication.” We do not have a copy of that purported email, but we know that Kyle Lucas only reached out because the Pipkins were trying to figure out why nothing was happening. See attachments to Exhibit 1. US Ecology would have the Commission believe that “the alleged delay was due to US Ecology’s good faith effort to settle.”<sup>4</sup> This cannot be true because there were no real efforts to settle. There was no attempt to mediate and at best, there were no more than a couple conversations that went nowhere. *See* Exhibit 1.

US Ecology states that “global settlement discussions were . . . more drawn out than a typical administrative settlement discussion.”<sup>5</sup> But there were no “global settlement discussions.” See Affidavits at Exhibits 1 and 2.

US Ecology knows that there was almost no effort to settle. As shown by the Affidavit attached as Exhibit 1 to this pleading, US Ecology did not enlist the assistance of TCEQ’s mediator, and there were no more than two rather useless limited conversations. There was never any real engagement in settlement discussions. Contrary to the statement made by US Ecology, it is not true that there was any real pursuit of settlement.

Moreover, even if one or both parties were engaged in settlement discussions, US Ecology’s failure to comply with the rules cannot be excused. OPIC accepts the argument that “it is common to postpone initiation of the docketing process to allow adequate time for settlement discussions at the Commission level.” First, as shown on Exhibit 1 attached to this Reply, the Commission’s mediator was never engaged. Second, this is not common. There is nothing to

---

<sup>4</sup> US Ecology Response at 4.

<sup>5</sup> US Ecology Response at 4.

prevent settlement discussions after the Preliminary Hearing. If settlement discussions appear promising, there is nothing to prevent one or both of the parties from seeking an abatement after the Preliminary Hearing – that is the common practice. US Ecology was simply happy to sit on its permit without having to face the question posed by the Commission about trampling on its neighbor’s property rights. It should not be rewarded for such behavior.

It is extremely disappointing and a little shocking to see US Ecology assert that the Petitioner engaged in “a seemingly bad faith effort to circumvent the administrative process.”<sup>6</sup> In fact, just the opposite is true. It was US Ecology that did not follow the rule. It is US Ecology that benefitted by not having the question posed by the Commissioner litigated. It is US Ecology that did not want and successfully delayed the hearing process for over a year. It is US Ecology who apparently told OCC that delay was needed for mediation, but never attempted mediation. If there was any bad faith, it was on the part of US Ecology. Had the Pipkins not threatened US Ecology, the contested case hearing would likely still not be set.

**II. The Commission has authority to revoke (1) the permit, (2) the application for renewal and amendment, or (3) the Interim Order referring the matter for contested case hearing.**

The ED states that “[t]he Executive Director cannot identify a basis in Texas Water Code § 7.302 or 30 TAC § 305.66 to support revocation of the permits.”<sup>7</sup> Similarly, OPIC asserts that because the permits are for non-hazardous waste, authority is lacking.<sup>8</sup> The ED need look only as far as 30 TAC § 305.66(a), which states that a permit or other order of the Commission “and may be . . . revoked for good cause at any time . . . for good cause.” Good cause includes but is not

---

<sup>6</sup> US Ecology Response at 6.

<sup>7</sup> ED Response at 3.

<sup>8</sup> OPIC Response at 4-5.

limited to any “cause sufficient to warrant termination or suspension of the authorization.” 30 TAC § 305.66(a)(10).

In this case Applicant cynically flaunted the renewal rule to continue operations for 404 days without having to address the essential question posed by the Commissioners: “Whether any existing rights, including, but not limited to, mineral rights, will be impaired by US Ecology’s injection of industrial and municipal nonhazardous waste in accordance with Texas Water Code § 27.051(a)(2). *Exhibit A to the Original Petition*. By avoiding the question, Applicant simply continued to impair Petitioner’s rights in its property without consequence. The obvious goal of the Applicant was to avoid the question referred by the Commission =for as long as possible. Applicant complied with the rule to have the case transmitted to SOAH only after it was given notice of the Petition to Revoke. Had the Petition to Revoke not been filed, it is unlikely that the contested case hearing would have ever been scheduled.

If there were ever good cause, this is it. The Commission may revoke the Permit, but it may also revoke its Interim Order referring the matter to SOAH. 30 TAC § 305.66(a). As it is clear that US Ecology was not interested in following the rules to have the matter sent to SOAH, so should the Commission should not hesitate to revoke its Order referring the matter to SOAH.

The ED’s argument that the Commission can only take action here for the reasons specified in 30 TAC § 305.66(f) or (g) is unavailing. First, 30 TAC § 305.66(f) specifies when a permit “may” be revoked. It does not specify that the reasons listed in 30 TAC § 305.66(f) are the only reasons for revocation. Second, 30 TAC § 305.66(g) is satisfied because the Commission can find that “a violation or violations are significant and that the permit holder or applicant has not made a substantial attempt to correct the violations.” US Ecology’s violation is significant as it unfairly

exploited the renewal rule to the detriment of its neighbors and it made no attempt to comply until a Petition to Revoke was threatened by providing notice.

As a penultimate note, Petitioner inadvertently cited to 30 TAC § 305.63(a)(4), which only applies to applications declared administratively complete on or before September 1, 1999. However, 30 TAC § 305.65(4) contains identical language, and applies to applications declared administratively complete on or after September 1, 1999. The Commission may rely on this citation.

Finally, the Pipkins reiterate that regardless of the question of revoking the Permit, the Commission has the clear authority to revoke its Interim Order referring the matter for a contested case hearing. 30 TAC § 305.66(a).<sup>9</sup> Good cause exists to revoke the Interim Order. US Ecology abused the rules and rolled the dice to keep its renewal alive without being subjected to a contested case hearing. Based on the good cause shown, the Commission should revoke its Interim Order and allow US Ecology to reapply.

### **III. US Ecology did not “rectify” its actions and the issue is not moot.**

The ED states that US Ecology’s abuse of the rule “has been rectified by the submission of the duplicates and the scheduling of the preliminary hearing for September 23.”<sup>10</sup> In fact, US Ecology has been operating for over 400 days as if its permit has been renewed by simply postponing the renewal process. Finally complying with the rules does not excuse 400+ days that it operated without a true renewal. Petitioner cannot reclaim those 400+ days of US Ecology’s operation. Unlike most proceedings, the question before the Commission in this case is whether US Ecology has the right to use the Petitioner’s property. By flaunting the rules, US Ecology

---

<sup>9</sup> Noting that the Commission may revoke any “other order of the Commission . . . .”

<sup>10</sup> ED Response at 3.

continued to use the Petitioner's property while ensuring that the question would not be addressed. US Ecology cannot be rewarded for such rogue and unwarranted behavior.

US Ecology admits that it never attempted to pull together the required documents to proceed to hearing until it received notice of the Petition to Revoke.<sup>11</sup> The rule does not leave the question of whether a contested case hearing should proceed in the hands of the Applicant. It is very clear: Applicant must "provide two duplicates of the original application, including all revisions to the application, to the chief clerk for inclusion in the administrative record in the format and time required by the procedures of the commission, no later than . . . 10 days after the chief clerk mails the commission order." 30 Tex. Admin. Code § 80.118(d)(1). It is 10 days, not when Applicant decides that settlement is not possible or when Applicant receives notice of a Petition to Revoke.

OPIC asserts that "the Petition has not demonstrated that US Ecology's Facility is or will be unable to conform to TCEQ rules." OPIC does not dispute, however, that US Ecology has violated 30 TAC § 80.118(d)(1).<sup>12</sup> Several parties assert that there is no specific consequence for violating that rule. But there is – it is the revocation of the permit or, at a minimum, the revocation of the Order that referred the matter to SOAH.

US Ecology asserts that the issue is moot because it was finally forced to follow the rule. Had this been an original application, that may be the case. But here, because it involved a renewal, US Ecology operated for over a year injecting waste in pore space owned by Petitioner while avoiding a contested case hearing. US Ecology may have set a hearing but has never satisfied the rule regarding when that hearing should occur. Petitioner has not been able to recover the 400+

---

<sup>11</sup> US Ecology Response at 4.

<sup>12</sup> See OPIC Response at 3.

days of US Ecology's rogue operations. Both the State and the Pipkins have been harmed. US Ecology should face a consequence.

**Conclusion**

Petitioner has shown that the Commission should revoke TCEQ Permit Nos. WDW344, WDW345, WDW346, WDW347, WDW348, WDW349 AND WDW350 and/or the renewal of TCEQ Permit Nos. WDW344, WDW345, WDW346, WDW347, WDW348, WDW349 AND WDW350.

Petitioner also pled for all other such relief to which Petitioner may be entitled. At a minimum the Interim Order referring the matter to a contested case hearing should be revoked, and US Ecology should be instructed that its renewal was not timely processed and should it desire to continue operations, it must reapply for a permit.

Respectfully submitted,

/s/ David J. Tuckfield

**THE AL LAW GROUP, PLLC**

David J. Tuckfield

State Bar Number: 00795996

12400 West Hwy 71, Suite 350-150

Austin, TX 78738

Telephone: (512) 576-2481

Facsimile: (512) 366-9949

david@allawgp.com



**CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of July 2025 a true and correct copy of the foregoing document was filed electronically with the Office of the Chief Clerk and was served on the following as indicated:

FOR US Ecology Winnie, LLC (via email):

Duncan C. Norton  
Mattie C. Neira  
Lloyd Gosselink Rochelle & Townsend, P.C.  
816 Congress Ave., Suite 1900  
Austin, TX 78701  
dnorton@lglawfirm.com  
mneira@lglawfirm.com

FOR THE EXECUTIVE DIRECTOR (via email):

Don Redmond, Staff Attorney  
Environmental Law Division  
State Bar of Texas No. 24010336  
Don.redmond@tceq.texas.gov  
P.O. Box 13087, MC 173  
Austin, Texas 78711-3087  
Phone: (512) 239-0612  
don.redmond@tceq.texas.gov  
pavan.bairu@tceq.texas.gov  
Kyle.lucas@tceq.texas.gov  
pep@tceq.texas.gov

FOR PUBLIC INTEREST COUNSEL (via email):

Garrett T. Arthur  
Public Interest Counsel  
Sheldon P. Wayne  
Assistant Public Interest Counsel  
Texas Commission on Environmental Quality  
Public Interest Counsel, MC-103  
P.O. Box 13087 Austin, Texas 78711  
garrett.arthur@tceq.texas.gov  
Sheldon.Wayne@tceq.texas.gov

/s/ David J. Tuckfield

# **EXHIBIT 1**

## AFFIDAVIT OF DAVID TUCKFIELD

THE STATE OF UTAH       §  
                                      §  
COUNTY OF DAVIS       §

BEFORE ME, the undersigned authority, on this day personally appeared David Tuckfield who, after being duly sworn, upon her oath deposed and stated as follows:

1.       “My name is David Tuckfield. I am over twenty-one (21) years of age. I am of sound mind and I have never been convicted of a felony or crime involving moral turpitude. I am fully competent to make this Affidavit, and all statements within this Affidavit are within my personal knowledge and the facts stated herein are true and correct.

2.       I am the attorney for Grayson Eden Pipkin, Bruce Fletcher Pipkin, and Pipkin Ranch Holdings, LP.

3.       After the Interim Order was issued in the matter of the Application By Us Ecology Winnie, LLC (“US Ecology”) for Amendments and Renewals of UIC Permit Nos. WDW344, WDW345, WDW346, WDW347, WDW348, WDW349, AND WDW350, TCEQ Docket No. 2023-1590-WDW (hereafter the “TCEQ Case”), I had no more than two conversations with attorney for US Ecology regarding settlement. Both times I suggested settlement was very unlikely because it would be driven by the associated civil case and that any real settlement discussions would need to be handled through the civil litigators. There were never any meaningful conversations or follow-up regarding settlement of the TCEQ Case. At no time did it appear that settlement was possible or progressing.

4.       I sent and received the e-mail string attached to this Affidavit, which are true and correct copies, where the following email exchanges occurred

March 5, 2025:       Because the matter had been languishing for over a year, I asked OCC for the status.

March 5, 2025: OCC responds: "This matter is currently on hold due to a request by the applicant to pursue mediation."

March 5, 2025: Having never heard of any efforts to pursue mediation, I asked Kyle Lucas, the person responsible for TCEQ mediation, whether "Applicant reached out to you on getting mediation scheduled?" I noted that the matter "has been languishing for a year."

March 5, 2025: TCEQ's mediator stated: "Applicant never requested my assistance on this one (and I believe actually declined my offer of assistance)."

5. To my knowledge, there was never any real attempt to engage in mediation for the TCEQ Case.

6. There were never any global settlement efforts that involved the TCEQ Case.

7. I never agreed that the contested case hearing should be delayed to pursue settlement. Settlement never looked promising or even a possibility.

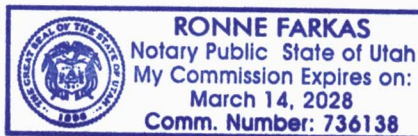
Further Affiant Sayeth Not."

Signed this 23<sup>rd</sup> day of July 2025.

By: David Tuckfield  
David Tuckfield

**BEFORE ME**, a notary public, on this day personally appeared David Tuckfield, known to me to be the person whose name is subscribed to the foregoing Affidavit, being by me first duly sworn, declared that the statements therein contained are true and correct. **SWORN TO AND SUBSCRIBED BEFORE ME** under my official hand and seal of office this 23<sup>rd</sup> day of July 2025.

Ronne Farkas  
Notary Public in and for the State of Utah





David Tuckfield &lt;david@allawgp.com&gt;

---

**TCEQ Docket Number 2023-1590-WDW**

---

**Kyle Lucas** <Kyle.Lucas@tceq.texas.gov>  
To: David Tuckfield <david@allawgp.com>

Wed, Mar 5, 2025 at 3:30 PM

David, Applicant never requested my assistance on this one (and I believe actually declined my offer of assistance). Would you like me to ask Duncan Norton, Applicant's atty, for status. I'm happy to cc you on email, letting him know it was you inquiring.

Kyle

---

**From:** David Tuckfield <david@allawgp.com>  
**Sent:** Wednesday, March 5, 2025 3:24 PM  
**To:** Kyle Lucas <Kyle.Lucas@tceq.texas.gov>  
**Subject:** Fwd: TCEQ Docket Number 2023-1590-WDW

Kyle -- see below on the above-referenced matter. Has the Applicant reached out to you on getting mediation scheduled? I represent the protestant in this one and it has been languishing for a year.

The AL Law Group, PLLC

David J. Tuckfield

12400 Highway 71 West  
Suite 350-150  
Austin TX 78738  
phone (512) 576-2481  
fax (512) 366-9949  
david@allawgp.com

.....CONFIDENTIALITY NOTICE.....

The information in this email may be confidential and privileged. If you are not the intended recipient, be aware that any review of this communication is prohibited, and you should notify the sender by return email and delete this email from your system. Thank you. This email does not constitute a "signed" document unless expressly stated.

----- Forwarded message -----

From: **Ellie Guerra** <Ellie.Guerra@tceq.texas.gov>  
Date: Wed, Mar 5, 2025 at 3:13 PM  
Subject: RE: TCEQ Docket Number 2023-1590-WDW  
To: David Tuckfield <david@allawgp.com>

Hi, David,

The interim order did refer the matter to SOAH, however a preliminary hearing has not been set. This matter is currently on hold due to a request by the applicant to pursue mediation. If that has changed, we'll be happy to initiate the SOAH docketing process as soon as we receive the necessary documents for the administrative record. I can provide additional details on the required documents and how to submit them to you and others you would like to have that information.

Please let me know if you have any questions.

Thank you,

Ellie

---

**From:** David Tuckfield <[david@allawgp.com](mailto:david@allawgp.com)>  
**Sent:** Wednesday, March 5, 2025 2:38 PM  
**To:** Ellie Guerra <[Ellie.Guerra@tceq.texas.gov](mailto:Ellie.Guerra@tceq.texas.gov)>  
**Subject:** TCEQ Docket Number 2023-1590-WDW

Ellie - Last February (Feb 27, 2024), the Commission issued an Interim Order referring the above-referenced matter for a Hearing on the Merits (see attached).

It's been a year and to my knowledge no hearing has been set. Can you tell me if the matter has been referred to SOAH and, if not, what the status of the matter is?

Thanks so much.

The AL Law Group, PLLC

David J. Tuckfield

12400 Highway 71 West  
Suite 350-150  
Austin TX 78738  
phone (512) 576-2481  
fax (512) 366-9949  
[david@allawgp.com](mailto:david@allawgp.com)

.....CONFIDENTIALITY NOTICE.....

The information in this email may be confidential and privileged. If you are not the intended recipient, be aware that any review of this communication is prohibited, and you should notify the sender by return email and delete this email from your system. Thank you. This email does not constitute a "signed" document unless expressly stated.

# **EXHIBIT 2**

**AFFIDAVIT OF MARK SPARKS**

STATE OF TEXAS

§

§

JEFFERSON COUNTY

§

Before me, the undersigned notary, on this day personally appeared Mark Sparks, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

1. My name is Mark Sparks. I am over 18 years of age, of sound mind, and capable of making this Affidavit. I have read U.S. Ecology Winnie, LLC's briefs filed before the TCEQ in Docket No. 2025-0753, and all statements within this Affidavit are within my personal knowledge and the facts stated herein are true and correct.

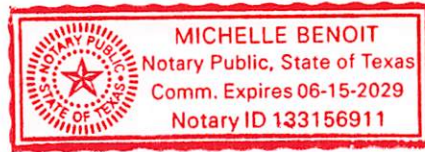
3. I am lead counsel in the state-court litigation pending in the 172<sup>nd</sup> Judicial District of Jefferson County, Texas between Pipkin Ranch Holdings, LP, the Pipkin brothers, and, *inter alia*, U.S. Ecology Winnie, LLC.

4. I was surprised to see the unverified suggestion in that briefing that we were engaged in settlement negotiations. Nothing could be further from the truth. I remember one phone call, many months ago, with one of the defense counsel (there are two defendants in the state-court litigation, the other being Ecoserve). In that phone call, with either counsel for U.S. Ecology Winnie, LLC., or counsel for Ecoserve, they asked if we wanted to mediate. I responded that our damage model was large, and that they would need to see our expert reports to understand it. After that phone call, months later, we produced our expert reports and never heard back from that lawyer, let alone "engaged in settlement discussions" with either U.S. Ecology Winnie, LLC or Ecoserve. So, when I read the TCEQ briefing that included unverified suggestions we were, it was rather shocking to me that allegation was made. No such discussions ever substantively occurred, and certainly nothing was discussed after we produced our expert reports.



  
\_\_\_\_\_  
Mark Sparks

Sworn to and subscribed before me by Mark Sparks on this the 25<sup>th</sup> day of July 2025.



Michelle Benoit  
\_\_\_\_\_  
Notary Public in and for  
The State of Texas