

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

March 10, 2010

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

Re: SOAH Docket No. 582-10-0967; TCEQ Docket No. 2009-1027-MWD; In the Matter of the Application of Southern Horizons, L.P. for Water Quality Permit No. WQ0014922001

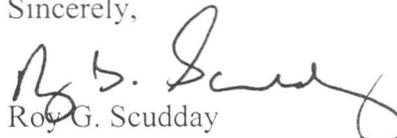
Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than March 30, 2010. Any replies to exceptions or briefs must be filed in the same manner no later than April 9, 2010.

This matter has been designated **TCEQ Docket No. 2009-1027-MWD; SOAH Docket No. 582-10-0967**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,


Roy G. Scudday
Administrative Law Judge

RGS/ap
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: SOUTHERN HORIZONS
SOAH DOCKET NUMBER: 582-10-0967
REFERRING AGENCY CASE: 2009-1027-MWD

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

ADMINISTRATIVE LAW JUDGE
ALJ ROY SCUDDAY

REPRESENTATIVE / ADDRESS

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xc: Docket Clerk, State Office of Administrative Hearings

**SOAH DOCKET NO. 582-10-0967
TCEQ DOCKET NO. 2009-1027-MWD**

IN THE MATTER OF THE	§	BEFORE THE STATE OFFICE
APPLICATION OF	§	
SOUTHERN HORIZONS, L.P.	§	OF
FOR WATER QUALITY PERMIT	§	
NO. WQ0014922001	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

Southern Horizons, L.P. (Applicant) has applied to the Texas Commission on Environmental Quality (TCEQ or Commission) for Water Quality Permit No. WQ0014922001 (Permit). Applicant seeks authority to discharge treated wastewater effluent to Cow Branch; then to East Fork San Jacinto River in Segment No. 1003 of the San Jacinto River Basin, from a wastewater treatment facility located approximately 3,300 linear feet southeast of the intersection of U.S. Highway 59 and King Port Drive in Montgomery County, Texas. The proposed permit authorizes a maximum permitted discharge of 120,000 gallons per day (gpd) of treated effluent.

II. PROCEDURAL HISTORY

Applicant's application was filed on August 15, 2008. The ED recommended issuance of the Draft Permit and published the requisite notices. On October 26, 2009, the Commission referred the case to the State Office of Administrative Hearings (SOAH) for a contested case hearing. to determine (1) whether the proposed permit contains adequate provisions to safeguard Lewis Haraway's use and enjoyment of his property from potential negative impacts of accidental releases of untreated waste and wastewater; and (2) whether the proposed permit identifies an adequate discharge route with sufficient carrying capacity to hold the proposed volume of Applicant's discharged effluent.

A preliminary hearing was conducted on January 6, 2010, in Conroe, Texas, by Administrative Law Judge (ALJ) Roy G. Scudday. Applicant was represented by William J. Kotlan. Lewis A. Haraway appeared on his own behalf. The Office of Public Interest Counsel

(OPIC) was represented by Amy Swanholm, attorney. The Executive Director of Texas Commission on Environmental Quality (ED) was represented by Bob Brush, attorney. All four were admitted as parties.

On February 10, 2010, Applicant filed its request to withdraw its application without prejudice. OPIC agreed with the request, but noted that Mr. Haraway did not agree.

III. APPLICABLE LAW

The rule at 30 TEX. ADMIN. CODE ANN (TAC) § 80.25(e) provides that an applicant is entitled to an order dismissing an application without prejudice if:

- (1) the parties, or the applicant, executive director, and public interest counsel if no parties have been named, agree in writing;
- (2) the applicant reimburses the other parties all expenses, not including attorneys fees, that the other parties have incurred in the permitting process for the subject application; or
- (3) the commission authorizes the dismissal of the application without prejudice.

IV. DISCUSSION

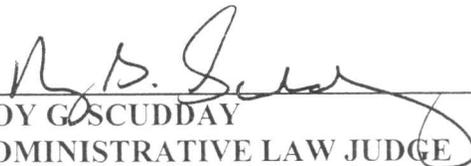
Because Mr. Haraway does not agree in writing to the withdrawal without prejudice, the Commission must make the determination to allow the dismissal of the application without prejudice. The reason for Applicant's request is that the current depressed housing market makes the project unfeasible at this time. In addition, Mr. Haraway was allowed to attend the preliminary hearing by telephone so as not to incur the cost of traveling to Conroe from his home in North Carolina.

Allowing Applicant to withdraw its application without prejudice to refile it in the future does not injure Mr. Haraway as he would need to be notified if a future application were filed that would affect his property, at which point the contested case process would then start again.

V. RECOMMENDATION

The ALJ recommends that the Applicant's permit application be dismissed without prejudice.

SIGNED March 10, 2010.



ROY G. SCUDDAY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**ORDER
CONCERNING THE APPLICATION BY
SOUTHERN HORIZONS, L.P.
FOR WATER QUALITY PERMIT NO. WQ0014922001
TCEQ DOCKET NO. 2009-1027-MWD
SOAH DOCKET NO. 582-10-0967**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the request by Southern Horizons, L.P. (Applicant) for the withdrawal of its application for a permit to authorize a discharge of treated wastewater to Cow Branch; then to East Fork San Jacinto River in Segment No. 1003 of the San Jacinto River Basin in Montgomery County, Texas. The Proposal for Decision (PFD) was presented by Roy G. Scudday (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a preliminary hearing on January 6, 2010, in Conroe, Texas.

The following participated in the preliminary hearing: Applicant; the Executive Director (ED); Lewis A. Haraway; and the Office of Public Interest Counsel (OPIC).

After considering the Proposal for Decision, the Commission makes the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

1. On August 15, 2008, Applicant filed an application for a permit to authorize a discharge of wastewater effluent. The ED recommended issuance of the Draft Permit and published the requisite notices.

2. On or about March 17, 2009, the TCEQ Executive Director (ED) issued a Notice of Application and Preliminary Decision for Texas Pollution Discharge Elimination System (TPDES) Permit No. WQ0014922001 and recommended issuance of the permit.
3. Public comments and hearing requests were filed by interested persons concerning the Application and Draft Permit, which were considered by the Commission on October 26, 2009.
4. The proposed wastewater treatment facility would be located approximately 3,300 linear feet southeast of the intersection of U.S. Highway 59 and King Port Drive in Montgomery County, Texas
5. On October 26, 2009 the TCEQ determined that Lewis A. Haraway had requested a contested case hearing.
6. By Interim Order dated October 26, 2009, the TCEQ referred the matter to SOAH for a contested case hearing to determine the following:
 - (1) whether the proposed permit contains adequate provisions to safeguard Lewis Haraway's use and enjoyment of his property from potential negative impacts of accidental releases of untreated waste and wastewater; and
 - (2) whether the proposed permit indentifies an adequate discharge route with sufficient carrying capacity to hold the proposed volume of Applicant's discharged effluent.
7. On December 1, 2009, Notice of Hearing on the application was published in the *Conroe Courier*, a newspaper published and generally circulated in Montgomery County, Texas.

8. A preliminary hearing was conducted on January 6, 2010, in Conroe, Texas, by ALJ Roy G. Scudday, at which hearing Lewis A. Haraway was admitted as a party, along with Applicant, OPIC, and the ED.
9. On February 10, 2010, Applicant filed its request to withdraw its application without prejudice.
10. On March 1, 2010, OPIC agreed in writing with Applicant's request.
11. Mr. Haraway has not agreed in writing with Applicant's request.
12. The dismissal of Applicant's permit application without prejudice will not be adverse to the legal rights of Mr. Haraway.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over permits for waste treatment facilities pursuant to TEX. WATER CODE ANN. (Code) ch. 361 and 30 TEX. ADMIN. CODE (TAC) ch. 332.
2. SOAH has the authority to conduct evidentiary hearings and prepare proposals for decision on contested matters referred by the Commission pursuant to TEX. GOV'T CODE ANN. § 2003.047.
3. Based on Findings of Fact Nos. 9-12, the Commission should dismiss Applicant's permit application without prejudice pursuant to 30 TAC § 80.25.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. In accordance with 30 TEX. ADMIN. CODE (TAC) § 80.25(e)(3), the Commission dismisses the permit application of Southern Horizons, LP, without prejudice.

2. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
3. The effective date of this Order is the date the Order is final, as provided by TEX. GOV'T CODE ANN. § 2001.144 and 30 TAC § 80.273.
4. The Commission's Chief Clerk shall forward a copy of this Order to all parties.
5. If any provision, sentence, clause, or phase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman
For the Commission