

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

May 1, 2024

Aubrey Pawelka, TCEQ Attorney
Jennifer Jamison, OPIC Attorney
Helen Gilbert, Applicant's Attorney
Emily Rogers, Protestants' Attorney

VIA EFILE TEXAS

**RE: SOAH Docket 582-23-23818; TCEQ Docket 2023-0844-MWD;
*Application of Highland Lakes Midlothian I, LLC
For New TPDES Permit No. WQ15999001***

Dear Parties:

On March 26, 2024, I issued a Proposal for Decision (PFD) and Draft Order in this case, recommending that the Texas Commission on Environmental Quality (TCEQ or Commission) grant the application (Application) filed by Highland Lakes Midlothian I, LLC (Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ15999001.

On April 15, 2024, the Executive Director (ED) of TCEQ filed exceptions, requesting that Findings of Fact (FOFs) 4 and 24 be revised to reflect correct filing and issuance dates. The City of Midlothian, the City of Waxahachie, and Ellis County (collectively, Protestants) filed exceptions the same day. The TCEQ Office of Public Interest Counsel (OPIC) and Applicant did not file exceptions.

On April 25, 2024, the ED and Applicant each filed responses to exceptions. Protestants and OPIC did not file responses. Applicant supports the corrections recommended by the ED, and the ED and Applicant urged that Protestants' exceptions be rejected.

Having reviewed the ED's exceptions, I recommend that FOFs 4 and 24 in the Draft Order be revised as follows:

4. TCEQ's Executive Director (ED) declared the Application administratively complete on August 18, 2021, and technically complete on **July 7, 2022** ~~September 30, 2022~~. The ED completed the technical review of the Application, prepared a draft permit (Draft Permit), and made the Draft Permit available for public review and comment.
24. On October 13, 2023, the parties submitted the following agreed list of issues, which the ALJ adopted by order dated **October 20, 2023:** ~~October 23, 2023:~~
[remainder of FOF 24 unchanged]

After reviewing Protestants' exceptions and the ED's and Applicant's responses, I do not recommend any changes to the PFD or Draft Order. Protestants' exceptions reiterate arguments that were made at the hearing on the merits and in written closing briefs, which were addressed at length in the PFD. Specifically, the PFD addressed Protestants' contentions regarding stream geometry;¹ an "on-channel impoundment" (perennial pool);² baseline dissolved oxygen saturation;³ phosphorus loading;⁴ and a Tier 2 antidegradation review,⁵ and restating that analysis here will provide no additional benefit to the Commission in its review. The same is true for Protestants' arguments regarding proper notice of

¹ See PFD at 10-17.

² See PFD at 17-20.

³ See PFD at 20-24.

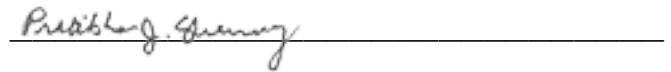
⁴ See PFD at 24-28.

⁵ See PFD at 29-32.

the Application⁶ and the potential risks posed by contaminants of emerging concern (CECs).⁷

I continue to recommend the Application be granted and the Draft Permit (as issued by the ED) be finalized and issued without changes. Accordingly, the PFD and Draft Order are ready for the Commission's consideration.

ALJ Signature:

A handwritten signature in cursive script, appearing to read "Pratibha J. Shenoy", is written over a horizontal line.

Pratibha J. Shenoy,

Presiding Administrative Law Judge

CC: Service List

⁶ See PFD at 32-36.

⁷ See PFD at 36-39.