TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 13, 2007

TO: Persons on the Attached Mailing List

RE: Docket No. 2006-1762-AIR
Dalvant Corporation
Request(s) filed on Permit No. 674

The above-referenced application and all timely filed hearing requests/requests for reconsideration on the above-referenced application will be considered by the commissioners of the Texas Commission on Environmental Quality (TCEQ) during the public meeting on **March 28, 2007**. The meeting will begin at 9:30 a.m. in Room 201S of Building E, at the commission's offices located at 12100 Park 35 Circle in Austin, Texas.

In accordance with commission rules, copies of the timely hearing requests/requests for reconsideration have been forwarded to the applicant, the Executive Director of the TCEQ, and the Public Interest Counsel of the TCEQ. Each of these persons is entitled to file a formal written response to the hearing requests/requests for reconsideration no later than 23 days before the public meeting date, that is by **February 26, 2007**. Persons who have filed timely hearing requests/requests for reconsideration may file a formal written reply to these responses no later than nine days before the public meeting, that is by **March 12, 2007**.

An original and 11 copies of any response or reply must be filed with the Chief Clerk of the TCEQ. The address of the Chief Clerk is: Office of Chief Clerk, ATTN: Agenda Docket Clerk, Mail Code 105, TCEQ, P. O. Box 13087, Austin, Texas 78711-3087 [Fax number (512) 239-3311]. On the same day any response is transmitted to the Chief Clerk, a copy must also be sent to the Executive Director, the Public Interest Counsel, the Director of the Office of Public Assistance, the Applicant and the requesters at their addresses listed on the attached mailing list. On the same day any reply is transmitted to the Chief Clerk, a copy must also be sent to the Executive Director, the Public Interest Counsel, the Director of the Office of Public Assistance, and other requesters and the applicant at their addresses listed on the attached mailing list.

The procedures for evaluating hearing requests/requests for reconsideration are located in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F (§§55.200-211) of the commission's rules. The procedures for the filing of responses and replies are located in 30 TAC Chapters 1 (§§1.10-11) and 55 (§55.209) of the commission's rules. Copies of these rules may be obtained by calling the Office of Public Assistance toll free at 1-800-687-4040.

The commissioners will not take oral argument or additional comment on this matter at the public meeting. Therefore, it is important to address the sufficiency of the requests in timely filed written responses and requesters' replies. At the public meeting, the commissioners may ask questions of the applicant, requesters, or TCEQ staff. The commissioners will make a decision on the request(s) during the meeting and will base that decision on the timely written requests, public comments, any written responses and replies, any responses to questions during the meeting, and applicable statutes and rules. Copies of all timely public comments and requests have been forwarded to the Office of Alternative Dispute Resolution to determine if informal, voluntary mediation might help resolve any dispute.

The attachment to this letter is intended to help you better understand how the TCEQ processes and evaluates hearing requests and requests for reconsideration. To obtain additional information, or to ask questions about anything in this letter, please call the TCEQ's Office of Public Assistance toll-free at 1-800-687-4040.

Sincerely,

LaDonna Castañuela
Chief Clerk

Enclosures: Copy of the Executive Director's Response to Public Comments. Copies of protestant correspondence to Applicant, Executive Director, Office of Public Interest Counsel, Office of Public Assistance and Alternative Dispute Resolution.

ATTACHMENT

Procedures Concerning Requests for Reconsideration and Requests for Contested Case Hearing

The purpose of this document is to describe commission procedures for evaluating requests for reconsideration and requests for contested case hearing. This document is not intended to be a comprehensive guide to public participation at the TCEQ.

The three commissioners determine the validity of requests for reconsideration and requests for contested case hearing and vote to grant or deny the requests during a public meeting. These public meetings are usually held every other Wednesday in Austin. Prior to the meeting, the following occurs:

1) the written requests are distributed to the executive director, the public interest counsel, and the applicant. These persons may file a response at least 23 days before the meeting;
2) the requester may then file a reply to the responses at least 9 days before the meeting. This is the requester's opportunity to address any deficiencies in the request that have been identified by TCEQ staff or the applicant. The requester must submit any information he or she wishes the commissioners to consider (ex: maps or diagrams showing requester's location relative to the applicant's proposed activities) by this deadline; and
3) the commissioners read the requests, the responses to requests, and the replies, before the public meeting. Then, during the public meeting, the commissioners vote to grant or deny the requests.

Requests for Reconsideration

A request for reconsideration must expressly state that the person is requesting that the commission reconsider the executive director's decision and state the reasons why the commission should reconsider the executive director's decision. The commission will consider a request for reconsideration at a scheduled public meeting and grant or deny the request.

Requests for Contested Case Hearing

A contested case hearing is an evidentiary proceeding, similar to a hearing in civil court. The law allows for holding a contested case hearing on certain types of applications.

A valid request for a contested case hearing must:

1) demonstrate that the requester is an "affected person" with a "personal justiciable interest" related to a legal right, duty, privilege, power or economic interest which would be affected by the application in a manner not common to the general public;
2) if the request is made by a group or association, identify one or more members who have standing to request a hearing, and the interests the group or association seeks to

protect;

3) expressly request a contested case hearing;
4) raise disputed issues of fact that are relevant and material to the commission's decision on the application which were raised during the comment period and not withdrawn prior to the filing of the Executive Director's Response to Comment; and
5) include any other information as specified in public notices.

The commission is authorized to protect human health and safety, and natural resources. The commission cannot address other matters outside the commission's authority, such as the effect of the existence of a proposed facility on nearby property values.

When the commissioners deny hearing requests, they often proceed to vote on approval or denial of the application. Alternatively, they may remand the application to the executive director for final action. If a hearing request is granted and the application is referred to the State Office of Administrative Hearings (SOAH), the commissioners will specify a list of issues which will be the subject of the hearing and an expected date for the SOAH judge's proposal for decision. The SOAH judge will conduct the hearing and submit a proposal to the commission to approve or deny the application.

The Alternative Dispute Resolution Office may contact requesters to determine their interest in informal discussions with the permit applicant and a mediator.

By necessity this document gives a very general description of commission procedures. If you have any questions, please call OPA toll-free at 1-800-687-4040.

MAILING LIST
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DOCKET NO. 2006-1762-AIR; PERMIT NO. 674

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REQUESTER:
Dale and Yvonne Perkins
P.O. Box 2353
Terrell, Texas 75160

TCEQ AIR QUALITY PERMIT NO. 674

APPLICATION BY	§	BEFORE THE
DALVANT CORPORATION	§	
	§	TEXAS COMMISSION ON
AIR QUALITY PERMIT	§	
NO. 674	§	ENVIRONMENTAL QUALITY
KAUFMAN COUNTY	§	

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or the TCEQ) files this Response to Public Comment (Response) on the application to renew Air Quality Permit No. 674.

As Required by Title 30 Texas Administrative Code § 55.156 (30 TAC § 55.156), before an application is approved, the Executive Director prepares a response to all timely, relevant, and material, or significant comments. The Office of Chief Clerk timely received written comments from Yvonne and Dale Perkins, dated August 29, 2005. Notwithstanding the limitation in the Rule to relevant and material, or significant comment, the Response addresses all timely public comments received, whether or not withdrawn. If you need more information about this permit application or the permitting process please call the TCEQ Office of Public Assistance at 1(800)687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

Dalvant Corporation has applied to the TCEQ to renew Air Quality Permit No. 674 that would authorize the applicant to continue operations of the Tawakoni Gas Plant, located on County Rd 330, about 8 miles north of Hwy 80 on FM 429, in Kaufman County.

Procedural Background

The TCEQ received Dalvant Corporation's application to renew Air Quality Permit No. 674 on July 11, 2005 and determined the application to be administratively complete on July 21, 2005. The applicant published Notice of Receipt of Application and Intent to Obtain Air Permit Renewal on August 19, 2005 in the *Terrell Tribune*. The fifteen day comment period ended on September 5, 2005. Written comments and a request for a contested case hearing were received by the TCEQ on August 31, 2005 from Yvonne and Dale Perkins. Since this application was declared administratively complete after September 1, 1999, this action is subject to the procedural requirements adopted pursuant to House Bill 801.

COMMENTS AND RESPONSES

COMMENT 1: Commenter indicated the gas plant is a threat to the health and quality of life for the growing population of north Kaufman County. The emissions from the Tawakoni Gas Plant have caused headaches, insomnia, and breathing difficulties. The odor from the well has been so strong it has caused nausea and headaches (Yvonne and Dale Perkins).

RESPONSE 1: The applicant initially applied for TCEQ Air Quality Permit No. 674 in 1973. The permit was issued on March 21, 1973. The applicant applied for a renewal of the air permit on December 12, 1988, and the permit was subsequently renewed. The current application is another renewal of Air Permit No. 674.

TCEQ's review of a permit renewal application is proscribed by statute. In a permit renewal action, the Commission at a minimum considers the compliance history of the applicant, and the condition and effectiveness of the existing emission control equipment and practices. The Commission may not impose more restrictive requirements in the renewal permit unless it is necessary to avoid a condition of air pollution or to ensure compliance with otherwise applicable federal or state air quality control requirements. A new review of impacts of air emissions is not required for a renewal permit.

With respect to air pollution, there is no indication, whether through agency investigations or citizen complaints, that the plant is causing or contributing to a condition of air pollution. Since Dalvant Corporation is not presently operational, a review of applicable state and federal air quality regulations did not reveal any more stringent requirements. However, if operations resume, Dalvant Corporation will be required to comply with 40 C.F.R. § 63.760 (National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities) and all other applicable regulations. In response to comments, permit language has been added which states the facility must comply with all applicable regulations if it resumes operations. The compliance history of Dalvant does not justify additional restrictions or requirements in the renewal permit. See response 2 for more information on the compliance history of Dalvant Corporation.

Although more restrictive requirements cannot be added into the renewal, not all units at this facility authorized under the original permit have been included; the removal of these units from the permit will reduce the amount of permitted emissions by 330 tons per year (tpy) of sulfur dioxide and four tpy of hydrogen sulfide. Therefore, the resulting impacts from the emissions allowed by the renewal permit will be significantly less than those allowed by the original permit.

Applicants must also comply with 30 TAC §101.4, which prohibits nuisance conditions. Under this rule, "No person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are

or may tend to be injurious to or adversely affect human health or welfare." The Texas Clean Air Act § 382.003(2) defines air contaminant to include "particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor or odor." Individuals are encouraged to report any concerns about nuisance issues by contacting the DFW Regional Office at 1(817) 588-5800, or by calling the twenty four hour toll-free Environmental Complaints Hotline at 1 (888) 777-3186. The TCEQ investigates all complaints received. If the facility is out of compliance with the terms and conditions of the permit, it will be subject to possible enforcement action.

COMMENT 2: Commenter opposes the granting of the permit to Dalvant Corporation because in the past they failed to comply with air quality standards. Dalvant Corporation was assessed a penalty in 1997 for an air quality violation. In 2003 the TCEQ investigated Dalvant Corporation for a gas odor. Dalvant Corporation reported a spill to the Texas Railroad Commission as a result of this investigation, but reported it under the name Rocanville Corporation. In addition, commenters reported an odor coming from the plant in August 2005 to the TCEQ (Yvonne and Dale Perkins).

RESPONSE 2: During the technical review of the permit renewal application, the TCEQ reviews the compliance history of the site and the company based on the criteria in 30 TAC §60.1-3. The compliance history report is also available on the TCEQ website, at http://www.tceq.state.tx.us/compliance/enforcement/history/get_list.html.

The compliance history for the company and site is reviewed for the five-year period prior to the date the permit application was received by the Executive Director. As such, the 1997 air quality violation is not considered part of the compliance history. The compliance history includes multimedia compliance-related components about the site under review. These components include the following: enforcement orders, consent decrees, court judgments, criminal convictions, chronic excessive emissions events, dates of TCEQ investigations, notices of violations (NOV), audits and violations disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution reduction programs, and early compliance. An investigation is defined in 30 TAC §60.2(c)(1)(L) as a "review of evaluation of information by the executive director or executive director's staff or agent regarding the compliance status of a site, *excluding* those investigations initiated by citizen complaints. An investigation, for the purposes of this chapter, may take the form of a site assessment, file or record review, compliance investigation, or other review or evaluation of information (emphasis added)." Since the 2003 and the 2005 investigations listed above are citizen complaints that did not result in a NOV, the TCEQ does not include these complaints in Dalvant Corporation's compliance history.

This applicant and its site have been rated and classified pursuant to 30 TAC §60.2. A company and site may have one of the following classifications and ratings:

High: <0.10; Above-average compliance record

Average by Default: Rating = 3.01; no compliance history
Average: 0.10 < Rating <45; generally complies with environmental regulations
Poor: Rating is <45; Performs below average

This site has a rating of 3.01 and a classification of AVERAGE BY DEFAULT. The company rating and classification, which is the average of the ratings for all sites the company owns, is 3.01 and AVERAGE. No changes can be made to the permit based on compliance history unless the applicant has been classified as a POOR performer. Therefore, no changes were made to the permit as a result of its compliance history.

CHANGES MADE IN RESPONSE TO COMMENT

In response to public comment, the Executive Director has added a provision to the draft permit to comply with all applicable federal and state air quality regulations in the situation it becomes operational again. This change is more fully described above in Response 1.

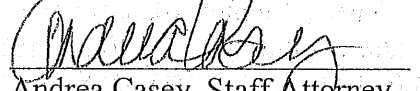
Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Glenn Shankle,
Executive Director

Stephanie Bergeron Perdue,
Deputy Director
Office of Legal Services

Robert Martinez, Director
Environmental Law Division



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REPRESENTING THE
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