

Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 12, 2006

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

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2006 SEP 12 PM 12:01
CHIEF CLERKS OFFICE

RE: Oak Grove Management Company
SOAH Docket No. 582-06-1502; TCEQ Docket No. 2006-0195-AIR

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Exceptions to the Administrative Law Judges' Proposal for Decision and Order in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Christina Mann".

Christina Mann
Assistant Public Interest Counsel

cc: Service List

Very truly yours,
[Signature]

The undersigned hereby certifies that the foregoing is a true and correct copy of the original as the same appears in the records of the [Organization]

Witness my hand and seal this [Day] of [Month], [Year].

[Signature]

Very truly yours,
[Signature]

Very truly yours,
[Signature]

Very truly yours,
[Signature]

JAN 23 15 11 15 01

CHIEF OFFICE

ON RECORD
COMMUNICATIONS
SECTION

SOAH DOCKET NO. 582-06-1502
TCEQ DOCKET NO. 2006-0195-AIR

IN THE MATTER OF
THE APPLICATION OF
OAK GROVE
MANAGEMENT
COMPANY FOR AIR
QUALITY PERMIT NO.
76474 AND
PREVENTION OF
SIGNIFICANT
DETERIORATION
PERMIT NO. PSD-TX-
1056

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BEFORE THE STATE

OFFICE OF

ADMINISTRATIVE

HEARINGS

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGES' PROPOSAL FOR DECISION AND ORDER**

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) and files these Exceptions to the Proposal for Decision (PFD) and Order recommended by the Administrative Law Judges (ALJs) in the above styled matter and would respectfully show the following:

OPIC is supportive of the PFD issued by ALJs Carol Wood and Thomas Walston on August 23, 2006. However, OPIC finds that in addition to the reasons discussed in the PFD, the Application by Oak Grove Management Company (Oak Grove or Applicant) for Air Permit No. 76474 and Prevention of Significant Deterioration (PSD) Permit No. PSD-TX-1056 should be denied because Oak Grove did not meet its burden in conducting its ozone impact analysis.

As OPIC has argued previously, the ozone screening tool utilized by the Applicant and approved by the ED staff is inappropriate to address the potential ozone

impacts for NO_x dominated sources such as the Oak Grove Steam Electric Generating Station. The applicable regulation, 40 CFR 52.21 (k), plainly states:

The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of any national ambient air quality standard in any air quality control region.

OPIC cannot find that a demonstration for a local area is sufficient to satisfy the mandate imposed on applicants as found above. The rule requires analysis *from the "owner or operator of the proposed source"* that accounts for impacts in "*any* air quality control region."¹

OPIC finds that proper modeling should have been required to be submitted by Applicant during the application process in order to make a demonstration that proposed emissions would not cause or contribute to air pollution in violation of any national ambient air quality standard in any air quality control region² or to determine whether the impacts from the proposed source would cause or contribute to a violation of *any* NAAQS.³

OPIC notes that even if one finds that the ED properly accepted the ozone screening technique for the local impacts analysis, without requiring further modeling, Protestants provided expert testimony regarding the modeled potential impacts and this evidence should be evaluated to determine whether or not there is an indication that the emissions from the facility will contravene the intent of the Health and Safety Code, including whether or not the emissions will measurably influence ambient ozone

¹ 40 CFR 52.21 (k) emphasis added.

² 40 CFR 52.21 (k)

³ See 30 TAC § 116.161

concentrations in an area outside the local area. As rebuttal, Oak Grove offers the testimony of Ralph Morris, a principal with the ENVIRON group, who also conducted specific modeling for the OGSES emissions. He did not dispute the modeling results offered and discussed by Dr. Allen. Mr. Morris only disputed Dr. Allen's "claims regarding OGSES' potential ozone-related impact on the DFW non-attainment and Austin Early Action Compact areas."⁴

Finding of fact No. 80 in the Proposed Order issued with the PFD states, "Oak Grove failed to prove by a preponderance of the evidence that the Station would comply with the NAAQS and PSD increments." OPIC agrees with this Finding, yet finds that the Commission should add a finding of fact specific to ozone analysis. Specifically, OPIC finds that the Commission should adopt a Finding of Fact stating: "Emissions from OGSES will measurably influence ambient ozone concentrations in an area outside the local area, such as Austin and Dallas-Forth Worth."

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 
Christina Mann

Assistant Public Interest Counsel
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⁴ Oak Grove Exhibit 43, Page 7, Lines 12-15.

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2006 eleven true and correct copies of the Office of the Public Interest Counsel's Exceptions to the Proposal for Decision (PFD) and Order were 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 or by deposit in the U.S. Mail.


Christina Mann

MAILING LIST
OAK GROVE MANAGEMENT COMPANY
SOAH DOCKET NO. 582-06-1502
TCEQ DOCKET NO. 2006-0195-AIR

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