

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge
July 26, 2010

CHIEF CLERKS OFFICE

2010 JUL 26 AM 10:43

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

VIA FACSIMILE: (512)239-5533

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

Re: SOAH Docket No. 582-09-3322; TCEQ Docket No. 2009-0398-IWD; Application by Oak Grove Management Company LLC for Renewal and Major Amendment to TPDES Permit No. WQ0001986000

Dear Mr. Trobman:

I address the comments and exceptions that were submitted by the Applicant, the Executive Director (ED) and Protestants with regard to the June 8, 2010, Proposal for Decision (PFD) and Proposed Order, as follows:

Applicant's comment

1. The Applicant notes a typographical error in Conclusion of Law #23 in the Proposed Order and suggests that the Conclusion of Law should be changed to begin "The OGSES is not a new source under Clean Water Act § 306 . . ." I agree with this change.

Executive Director's exceptions

1. The ED recommends that Findings of Fact No. 21 and 22 be modified to replace reference to "Notice of Receipt of Application and Preliminary Decision" to "Notice of Receipt and Preliminary Decision." I agree with this proposed amendment of Findings of Fact Nos. 21 and 22.
2. The ED recommends adding a new Finding of Fact, No. 25, which would state: "In this Order, the draft document issued by the TCEQ on March 12, 2009, will be referred to as the 'revised draft permit.' This term is not meant to describe what this document would be called under the EPA-TCEQ MOA concerning NPDES permitting." I agree that this Finding could be added, but note that MOA has not been defined as a term in the Proposed Order. Therefore, I'd recommend that any revisions refer to the "EPA-TCEQ Memorandum of Agreement" instead of MOA.

Reply to Exceptions by ALJ
Page 2
SOAH Dkt. #582-09-3322

3. The ED suggests replacing Finding of Fact No. 85 with the following Findings of Fact:
85. OGSES applied for a major amendment to increase the volume of its discharge; therefore, TCEQ was required to perform an antidegradation review.
 86. The primary discharge canal is not water in the state, therefore an antidegradation review was not required.
 87. Sub-impoundment A, the final discharge canal, and Outfall 002 are water in the state, but the water quality does not exceed fishable swimmable; therefore only a Tier 1 antidegradation review was required.
 88. TCEQ performed a Tier 1 antidegradation review of Impoundment A, the final discharge canal, and Outfall 002 and determined that existing water quality uses will not be impaired by the increase in flow from OGSES.
 89. Twin Oak Reservoir, Duck Creek, and the Navasota River Below Lake Limestone are water in the state and have water quality above the fishable swimmable standard; therefore both a Tier 1 and Tier 2 antidegradation reviews were required.
 90. TCEQ performed a Tier 1 and Tier 2 antidegradation review of Twin Oak Reservoir, Duck Creek, and the Navasota River Below Lake Limestone and determined that existing uses will be maintained and protected.

The ED also suggests deleting Findings of Fact 90 and 91 because they are incorporated in the new proposed findings 85-90.

I agree that the changes should be made, although I recommend removing the "a" before "Tier 1 and Tier 2" in new Finding of Fact 89.

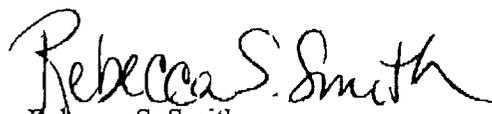
4. The ED also recommends modifying Finding of Fact 125 to read:
125. The Outfall 002 discharge is authorized as an intermittent and variable flow, and, consistent with TCEQ guidelines, does not have the same critical conditions as Outfall 001.
- In response to the modification, the ED recommends adding a new Finding of Fact 126:
126. Whole Effluent Toxicity (WET) testing is not appropriate for an intermittent and variable flow discharge; therefore WET testing is not required at Outfall 002.

I agree with both recommendations, as well as with the recommendation that the Findings of Fact be renumbered in light of the revisions.

Protestants' exceptions

Regarding all of the Protestants' comments, arguments and exceptions, I recommend no changes to the PFD or Proposed Order.

Sincerely,


Rebecca S. Smith
Administrative Law Judge

Reply to Exceptions by ALJ

Page 2

SOAH Dkt. #582-09-3322

3. The ED suggests replacing Finding of Fact No. 85 with the following Findings of Fact:
- 85. OGSES applied for a major amendment to increase the volume of its discharge; therefore, TCEQ was required to perform an antidegradation review.
 - 86. The primary discharge canal is not water in the state, therefore an antidegradation review was not required.
 - 87. Sub-Impoundment A, the final discharge canal, and Outfall 002 are water in the state, but the water quality does not exceed fishable swimmable; therefore only a Tier 1 antidegradation review was required.
 - 88. TCEQ performed a Tier 1 antidegradation review of Impoundment A, the final discharge canal, and Outfall 002 and determined that existing water quality uses will not be impaired by the increase in flow from OGSES.
 - 89. Twin Oak Reservoir, Duck Creek, and the Navasota River Below Lake Limestone are water in the state and have water quality above the fishable swimmable standard; therefore both a Tier 1 and Tier 2 antidegradation reviews were required.
 - 90. TCEQ performed a Tier 1 and Tier 2 antidegradation review of Twin Oak Reservoir, Duck Creek, and the Navasota River Below Lake Limestone and determined that existing uses will be maintained and protected.

The ED also suggests deleting Findings of Fact 90 and 91 because they are incorporated in the new proposed findings 85-90.

I agree that the changes should be made, although I recommend removing the "a" before "Tier 1 and Tier 2" in new Finding of Fact 89.

4. The ED also recommends modifying Finding of Fact 125 to read:
- 125. The Outfall 002 discharge is authorized as an intermittent and variable flow, and, consistent with TCEQ guidelines, does not have the same critical conditions as Outfall 001.
- In response to the modification, the ED recommends adding a new Finding of Fact 126:
- 126. Whole Effluent Toxicity (WET) testing is not appropriate for an intermittent and variable flow discharge; therefore WET testing is not required at Outfall 002.

I agree with both recommendations, as well as with the recommendation that the Findings of Fact be renumbered in light of the revisions.

Protestants' exceptions

Regarding all of the Protestants' comments, arguments and exceptions, I recommend no changes to the PFD or Proposed Order.

Sincerely,


Rebecca S. Smith
Administrative Law Judge

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STYLE/CASE: OAK GROVE MANAGEMENT CO LLC
SOAH DOCKET NUMBER: 582-09-3322
REFERRING AGENCY CASE: 20090398-IWD

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

ADMINISTRATIVE LAW JUDGE
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5

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EXCEPTIONS LETTER (BY ALJ)

REGARDING:

582-09-3322

DOCKET NUMBER:

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