

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

June 28, 2010

The Honorable Rebecca Smith  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> Street, Suite 502  
P.O. Box 13025  
Austin, Texas 78711-3025

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

Dear Judge Smith:

Enclosed please find the original of the Executive Director's Exceptions to the ALJ's Proposal for Decision in the above-named and numbered cause. If you have any questions, please do not hesitate to contact me at (512) 239-3417.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathy J. Humphreys".

Kathy J. Humphreys  
Staff Attorney  
Environmental Law Division

Enclosure

cc: Service List

SOAH DOCKET NO. 582-09-3322  
TCEQ DOCKET NO. 2009-0398-IWD

APPLICATION OF OAK	§	STATE OFFICE
GROVE MANAGEMENT	§	
COMPANY LLC FOR WATER	§	OF
QUALITY PERMIT NO.	§	
WQ0001986000	§	ADMINISTRATIVE HEARINGS

EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE  
ALJ'S PROPOSAL FOR DECISION

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files these comments on the draft Order prepared by the Administrative Law Judge.

The Executive Director generally agrees with the draft Order but requests that the following changes be made:

Modify Finding of Fact No. 21 from "Notice of Receipt of Application and Preliminary Decision" to "Notice of Receipt and Preliminary Decision."

Modify Finding of Fact No. 22, from "Notice of Receipt of Application and Preliminary Decision" to "Notice of Receipt and Preliminary Decision."

Add new Finding of Fact No. 25 which states:

25. 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.

Replace 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 on 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.

Delete Findings of Fact 90 and 91 because they are incorporated in the Findings of Fact 85-90 above.

Modify Finding of Fact 125 to:

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, ~~including biomonitoring requirements.~~

Add new Finding of Fact 126 which states:

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.

Renumber the other Findings of Fact accordingly.

Respectfully submitted,

Texas Commission on Environmental  
Quality

Mark R. Vickery, P.G.  
Executive Director

Robert Martinez, Director  
Environmental Law Division

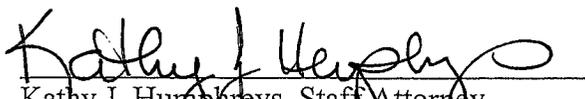
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REPRESENTING THE EXECUTIVE  
DIRECTOR OF THE TEXAS  
COMMISSION ON ENVIRONMENTAL  
QUALITY

**CERTIFICATE OF SERVICE**

I certify that on June 28, 2010, the original and 7 copies of the foregoing Executive Director's Exceptions to the Administrative Law Judge's Proposal for Decision was filed with the Office of the Chief Clerk and was served on all parties listed below via hand delivery, first class mail, agency mail, facsimile and/or email.

  
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Environmental Law Division

The Honorable Rebecca Smith  
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