

PROPOSED AMENDMENT OF TCEQ PERMIT NO. WQ0001986000

APPLICATION BY § BEFORE THE
OAK GROVE MANAGEMENT § § TEXAS COMMISSION ON
COMPANY LLC § § ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment on Oak Grove Management Company LLC's (Applicant) application to amend and renew Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001986000 and on the Executive Director's preliminary decision. As required by Title 30 of the Texas Administrative Code, Section 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The TCEQ's Office of the Chief Clerk received a timely comment letter from Wendi Hammond (Commenter) on behalf of SEED Coalition, and Robertson County: Our Land Our Lives (RCOLOL). This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater 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

The Applicant currently operates the Oak Grove Steam Electric Station (Facility). The facility consists of two lignite/coal fired steam electric generating units (1760 megawatts, MW total). The Applicant has applied to the TCEQ for a major amendment with renewal to authorize the increase in the total volume discharged during any 24-hour period from not to exceed 1,470,000,000 gallons to a total volume discharged during any 24-hour period not to exceed 1,610,000,000 gallons via Outfall 001; delete Outfalls 004 and 005; move the discharge locations for Outfalls 006 and 007 to the Primary Discharge Canal prior to discharge via Outfall 001; renumber Outfall 006 to internal Outfall 101; renumber Outfall 007 to internal Outfall 401; add low volume waste and metal cleaning waste on an intermittent and flow variable basis via internal Outfall 101; add low volume waste, metal cleaning waste, bottom ash contact water, and flue gas desulfurization (FGD) system wastewater on an intermittent and flow variable basis via internal Outfall 401; add the discharge of coal pile runoff, low volume waste, and storm water on an intermittent and flow variable basis via new internal Outfall 201; add the discharge of low volume waste on an intermittent and flow variable basis via Outfall 002; move the discharge location for Outfall 003 to the Primary Discharge Canal prior to discharge via Outfall 001; renumber Outfall 003 to internal Outfall 301; remove the 4.0 mg/l maximum chlorine residual concentration and reduce the 1.0 mg/l minimum chlorine concentration monitoring frequency from five times per week to once per week at internal Outfall 301; add the discharge of previously monitored effluents from internal Outfalls 101, 201, 301 and 401 via Outfall 001; revise monitoring location descriptions; and recalculate effluent limitations with adjustment and/or removal of effluent limitations as applicable.

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CHIEF CLERK'S OFFICE

The facility is located on the west shore of Twin Oak Reservoir, approximately 8.5 miles south of Texas Highway 7, off Farm-to-Market Road 979, and approximately 12 miles north of the City of Franklin, Robertson County, Texas. The effluent is discharged via Outfall 001 (at the end of the Primary Discharge Canal) into Sub-impoundment A: thence through the unnamed Final Discharge Canal and over a drop weir into Twin Oak Reservoir; thence to Duck Creek, and via Outfall 002 through a drainage ditch into Twin Oak Reservoir; thence to Duck Creek; thence to the Navasota River Below Lake Limestone in Segment No. 1209 of the Brazos River Basin. The unclassified receiving waters have no significant aquatic life use for Sub-impoundment A, the unnamed Final Discharge Canal, and the drainage ditch, and high aquatic life use for Twin Oak Reservoir. The designated uses for Segment No. 1209 are high aquatic life use, contact recreation, and public water supply.

Procedural Background

The permit amendment application was received on June 25, 2007 and declared administratively complete on July 19, 2007. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on August 1, 2007 in the *Calvert Tribune*, *Hearne Democrat*, and *The Franklin Advocate*. The Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD) was initially published on August 20, 2008 in the *Calvert Tribune*, *Hearne Democrat*, and *The Franklin Advocate* and again on March 18, 2009 in the *Calvert Tribune*, *Hearne Democrat*, and *The Franklin Advocate*. The public comment period ended on April 17, 2009. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801 (76th Legislature, 1999).

COMMENTS AND RESPONSES

COMMENT 1:

Commenter states that Mr. Paul Rolke of Rolke Ranch, and member of RCOLOL and SEED, is concerned about health effects for himself, his family, his livestock and wildlife associated with the water supply and creeks.

RESPONSE 1:

The proposed permit was drafted in accordance with Title 30 of the Texas Administrative Code (30 TAC), Chapter 307, and "Procedures to Implement the Texas Surface Water Quality Standards (TSWQS)," January 2003 (Implementation Procedures). The TSWQS at 30 TAC Chapter 307, states that surface waters cannot be made toxic to aquatic or terrestrial organisms. While 30 TAC Chapter 307, and the Implementation Procedures do not specifically designate criteria for the protection of livestock, they do designate criteria for the protection of aquatic life and human health that should preclude impacts to the health and performance of livestock.

A guidance document provided by the Texas Agricultural Extension Service entitled "Water Quality: Its Relationship to Livestock" (Doc. No. L2374) states that the most common water quality problems affecting livestock production are high mineral concentrations (excess salinity), high nitrogen, bacteria contamination, heavy growths of blue-green algae, and petroleum, pesticide, and fertilizer spills.

The constituents of concern mentioned in the document are generally not associated with the waste streams generated from this facility and should not affect livestock. Additionally, the proposed permit has effluent limitations and monitoring requirements intended to protect human health, safety and the environment. In accordance with §307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that “no lowering of water quality by more than a de minimis extent” is expected in Twin Oak Reservoir, Duck Creek, and the Navasota River Below Lake Limestone which has been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

COMMENT 2:

Commenter states that Mr. Rolke is concerned about his property being flooded due to runoff from the Applicant’s property, and overflow from the Applicant’s impoundments and discharge canals.

RESPONSE 2:

The TCEQ has no jurisdiction to address flooding issues in the wastewater permitting process. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state’s rivers, lakes, and coastal waters. The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation, or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route. Additionally, the proposed permit does not limit the ability of a landowner to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

COMMENT 3:

Commenter states that Mr. Rolke is also concerned with aesthetic impacts to his and his family’s enjoyment of family walks, bird watching, fishing, hunting, camping and general enjoyment of the outdoors, his property and recreational areas.

RESPONSE 3:

The TSWQS, as discussed in *Response 1*, specify narrative and general criteria for the protection of aquatic life and human health in water in the state. The draft permit includes effluent limitations and monitoring requirements designed to ensure that the effluent meets TSWQS,

including narrative criteria to protect and maintain the aesthetic and aquatic life, habitat, and recreational use of Twin Oaks Reservoir and Duck Creek. The review determined that the proposed action complies with 30 TAC §307.4 of the TSWQS.

Also, the proposed permit does not limit the ability of a landowner to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

COMMENT 4:

Commenter states that the application and draft permit do not comply with all federal and state laws and regulations.

RESPONSE 4:

This comment is general in nature and does not provide enough information for the ED to know what the exact concern is. Therefore, the ED acknowledges this comment but is unable to respond to this comment specifically. In general, the Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements of the Federal Clean Water Act; Texas Water Code; applicable sections of the Commission rules and policies; and EPA Guidelines.

COMMENT 5:

Commenter states that the application and draft permit would cause health hazards, nuisances and/or other adverse effects to the public and environment.

RESPONSE 5:

The TSWQS and the Implementation Procedures designate criteria for the protection of human health in water in the State. High aquatic life use is designated for Twin Oak Reservoir. The proposed permit was drafted in accordance with the TSWQS and the Implementation Procedures and should be protective of human health and preclude nuisances and/or other adverse effects in the receiving stream when the Applicant operates and maintains the facility according to the requirements of the proposed permit. Should these conditions and/or other potential violations of the TPDES permit be observed at the facility, observers are encouraged to report an environmental complaint by calling toll-free, 1-888-777-3186 or calling the TCEQ, Region 9 - Waco Office, at 254-751-0335. On a complaint basis, the regional investigators will investigate the conditions at the facility. If the regional investigator documents a violation of TCEQ regulations or conditions included in the TPDES permit, then appropriate action will be taken.

The proposed permit does not limit the ability of a landowner to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

COMMENT 6:

Commenter states that the application and draft permit would allow contamination of surface and ground waters.

RESPONSE 6:

The Water Quality Division has determined that the draft permit has been developed in accordance with the Texas Surface Water Quality Standards, which ensure that the effluent discharge is protective of aquatic life, human health, and the environment. The review process for surface water quality is conducted by the Standards Implementation Team and Water Quality Assessment Team surface water modelers. The Water Quality Division has determined that if the surface water quality is protected, then the groundwater quality in the vicinity will not be impacted by the discharge.

The draft permit also includes requirements for lining process wastewater ponds at this facility. Other Requirements No. 11 in the proposed permit provides that:

Prior to use, all process wastewater ponds shall be lined in compliance with one of the following requirements:

- a. Soil Liner: The soil liner shall contain at least 3 feet of clay-rich (liquid limit greater than or equal to 30 and plasticity index greater than or equal to 15) soil material along the sides and bottom of the pond compacted in lifts of no more than 9 inches, to 95% standard proctor density at the optimum moisture content to achieve a permeability equal to or less than 1×10^{-7} cm/sec.
- b. Plastic/Rubber Liner: The liner shall be either a plastic or rubber membrane liner at least 30 mils in thickness which completely covers the sides and the bottom of the pond and which is not subject to degradation due to reaction with wastewater with which it will come into contact. If this lining material is vulnerable to ozone or ultraviolet deterioration it should be covered with a protective layer of soil of at least 6 inches. A leak detection system is also required.
- c. Alternate Liner: The permittee shall submit plans for any other pond lining method. Pond liner plans must be approved in writing by the Executive Director of the Texas Commission on Environmental Quality (TCEQ) prior to pond construction.

The permittee shall notify the TCEQ Regional Office upon completion of construction of the pond and at least a week prior to its use. Certification of the lining specifications shall be provided by a Texas licensed professional engineer and shall be available for inspection by TCEQ personnel upon request. For new construction, the certification and the test results of soils forming the bottom and sides of the pond shall be submitted to the TCEQ, Wastewater Permitting Section (MC-148) and Regional Office for review prior to discharging any wastewaters into the ponds. Permeability tests shall be made with material typical of the expected use.

If the ponds are constructed, maintained, and operated according to the requirements of the draft permit, wastewater should not migrate downward through the liner and should pose no risk to area groundwater resources.

COMMENT 7:

Commenter states that the application and draft permit do not comply with requisite analysis and use of best available technology.

RESPONSE 7:

This comment is general in nature and does not provide enough information for the ED to know what the exact concern is. Therefore, the ED acknowledges this comment but is unable to respond specifically. In general, regulations promulgated in Title 40 of the Code of Federal Regulations (CFR) require technology-based limitations be placed in wastewater discharge permits based on effluent limitations guidelines, where applicable, and/or on best professional judgment (BPJ) in the absence of guidelines. The facility discharges are covered by the Steam Electric Power Generating Point Source Effluent Limitation Guidelines found at 40 CFR Part 423. The *Statement of Basis/Technical Summary and Executive Director's Preliminary Decision* (SOB/Technical Summary) details the calculations and discussions of technology-based effluent limitations proposed in the permit in *Appendix A*.

Because the facility had not begun discharging when the application was submitted and reviewed, effluent analysis was not available for screening for compliance with Texas Surface Water Quality Standard (30 TAC Chapter 307). The facility recently began operation and commenced discharging. The Applicant submitted sampling data per the current permit, *Other Requirement No. 15*. *Other Requirement No. 15* in the proposed permit and current permit, requires the facility to submit effluent analyses once discharge commences and these analyses will be compared against the water quality-based effluent limitations found in *Appendix A* of the current permit SOB/Technical Summary and/or *Appendix B* of the draft permit SOB/Technical Summary, whichever applies at the time of submittal.

The effluent data from Outfall 001 was screened against the calculated water quality-based effluent limitations found in both the current permit SOB/Technical Summary (see *Appendix A - TEXTOX Menu 4* for discharges to a Lake or Reservoir) and the proposed permit SOB/Technical Summary (See *Appendix B - TEXTOX Menu 8* for discharges to an intermittent stream within three miles of a Lake or Reservoir). No pollutant exceeded 70% of the calculated daily average water quality based effluent limitation.

COMMENT 8:

Commenter states that the application and draft permit will allow violation(s) of water quality standards.

RESPONSE 8:

The Texas Surface Water Quality Standards (TSWQS) specify narrative and general criteria for the protection of aquatic life and human health in water in the state. This application was evaluated and water quality-based effluent limitations were calculated from freshwater aquatic

life criteria found in Table 1 of the TSWQS and effluent limitations for the protection of human health are calculated using criteria for the consumption of freshwater fish tissue found in Table 3 of the TSWQS.

For Outfalls 001 and 002, the initial discharge is to an intermittent stream (Sub-impoundment A for 001 and a ditch for 002) within three miles of Twin Oak Reservoir. For the immediate receiving water there is no mixing zone and acute toxic criteria apply. Wasteload allocations (WLAs) are calculated using estimated effluent percentages, criteria outlined in the TSWQS, and partitioning coefficients for metals (when appropriate and designated in the implementation procedures). From the WLA, a long term average (LTA) is calculated using a log normal probability distribution, a given coefficient of variation (0.6), and a 99th percentile confidence level. The LTA is the long term average effluent concentration for which the WLA will never be exceeded using a selected percentile confidence level. The lower of the two LTAs (acute and chronic for aquatic life and only one LTA for human health) is used to calculate a daily average and daily maximum effluent limitation for the protection of aquatic life using the same statistical considerations with the 99th percentile confidence level and a standard number of monthly effluent samples collected (12).

Assumptions used in deriving the effluent limitations include segment values for hardness, chlorides, pH and Total Suspended Solids (TSS) according to the segment-specific values contained in the TCEQ guidance document, "Procedures to Implement the Texas Surface Water Quality Standards" (IPs), January 2003. The segment values are 82 mg/l CaCO₃ for hardness, 55 mg/l Chlorides, 7.25 standard units for pH, and 28.6 mg/l for TSS.

TCEQ practice for determining significant potential is to compare the reported analytical data against percentages of the calculated daily average water quality-based effluent limitation. Permit limitations are required when reported analytical data exceeds 85 percent of the calculated daily average water quality-based effluent limitation. Monitoring and reporting is required when reported analytical data exceeds 70 percent of the calculated daily average water quality-based effluent limitation.

As stated in *Response 7*, no pollutant screened exceeded 70% of the calculated daily average water quality based effluent limitation as calculated in the proposed permit, SOB/Technical Summary (See *Appendix B - TEXTOX Menu 8* for discharges to an intermittent stream within three miles of a Lake or Reservoir). Therefore, after this comparison the data collected at Outfall 001 does not show the potential to exceed the applicable water quality criteria or violate water quality standards.

COMMENT 9:

Commenter states that the application and draft permit will allow degradation of the receiving waters.

RESPONSE 9:

Under 30 TAC § 307.5, the TCEQ must maintain and protect the water quality of the state under a policy of anti-degradation. The Applicant's permit application was evaluated for the purpose of protecting aquatic life, human health and the environment. At a minimum, the review includes an analysis of the existing uses of the receiving waters, which aids in establishing the

appropriate discharge limitations, and a waste load analysis, which determines the quality of the water discharged by the applicant into the receiving stream, 30 TAC § 307.5(c). The standards established under the permit are determined by the water quality and quantity of the receiving stream and the impacts that the effluent may have on the receiving stream based on its volume, the flow rate and the type of waste being discharged by the facility. This information is used by the agency to develop discharge limitations that will protect the quality of the water so that the use of the water will not be impaired and the health and safety of individuals and wildlife that may come into contact with the water is protected. In accordance with §307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no lowering of water quality by more than a de minimis extent is expected in Twin Oak Reservoir, Duck Creek, and the Navasota River Below Lake Limestone which has been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

COMMENT 10:

Commenter states that the notice did not comply with all federal and state laws and regulations.

RESPONSE 10:

This comment is general in nature and does not provide enough information for the ED to know what the exact concern is. Therefore, the ED acknowledges this comment but is unable to respond specifically. As discussed in the *Procedural Background* above, the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on August 1, 2007 in the *Calvert Tribune*, *Hearne Democrat*, and *The Franklin Advocate*. The Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD) was initially published on August 20, 2008 in the *Calvert Tribune*, *Hearne Democrat*, and *The Franklin Advocate* and again on March 18, 2009 in the *Calvert Tribune*, *Hearne Democrat*, and *The Franklin Advocate*. The public had 30 days from the date of publication of the second NAPD (March 18, 2009) to submit written comments to the Chief Clerk's Office. The NORI and the NAPD were published in accordance with the requirements of 30 TAC Chapter 39, Subchapters H and J.

COMMENT 11:

Commenter states that the application is incomplete, contains inaccuracies and/or fails to include all necessary and required information.

RESPONSE 11:

This comment is general in nature and does not provide enough information for the ED to know what the exact concern is. Therefore, the ED acknowledges this comment but is unable to respond to this comment specifically. In general, when the TCEQ receives a permit application it goes through an administrative and technical review under 30 TAC §§ 281.3, 281.17; and 281.19. This application was received on June 25, 2007 and declared administratively complete

on July 19, 2007. After the application is declared administratively complete, the technical review begins with the Water Quality Assessment (WQA) Section.

The WQA Section provides recommendations used in the draft permit. They determine the designated uses of the water body which is receiving the proposed discharge, the critical conditions for the water body (i.e. low flow) when the water body is most susceptible to adverse effects, the limitations to ensure the dissolved oxygen criteria for the water body is maintained, and the whole-effluent toxicity testing requirements. Once the WQA Section's review is completed, the permit application is assigned to a permit writer.

The permit writer reviews the information about the facility and the proposed discharge and develops technology-based effluent limitations based on federal effluent guidelines, if applicable. Using the permit application and recommendations from the WQA Section, the permit writer develops water quality-based effluent limitations. The permit writer then compares the technology-based limitations with the water quality-based effluent limitations and applies the more protective limits in the draft permit. The permit writer discusses the rationale used in developing the draft permit in the SOB/Technical Summary as required by 30 TAC § 281.21. All through this process additional information can be submitted by the Applicant and included with the application. The application, draft permit and SOB/Technical Summary are then made available for viewing and copying by the public.

COMMENT 12:

Commenter questions the consistency and compatibility of the application and proposed permit with the applicable water quality management plan.

RESPONSE 12:

This comment is general in nature and does not provide enough information for the ED to know what the exact concern is. Therefore, the ED acknowledges this comment but is unable to respond specifically. In general, the Texas Water Quality Management Plan (WQMP) is the product of a wastewater treatment facility planning process developed and updated in accordance with provisions of Sections 205(j), 208, and 303 of the federal Clean Water Act (CWA), as amended. The WQMPs are used to direct planning for implementation measures that control and/or prevent water quality problems. Several elements may be contained in the WQMP, such as effluent limitations of wastewater facilities, total maximum daily loads (TMDLs), nonpoint source management controls, identification of designated management agencies, and ground water and source water protection planning. Some of the elements related to limits within TPDES permits that may be contained in the WQMP include oxygen-related constituents in domestic wastewater permits or other limits that have been developed as a result of a TMDL or other special study. Not all TPDES permits nor all limits in TPDES permits are required to be explicitly detailed in the WQMP.

COMMENT 13:

Commenter states that the application does not contain adequate facility designs and specifications.

RESPONSE 13:

The design and specifications for an industrial facility is not required as part of an industrial wastewater permit application. However, the proposed draft permit requires the Applicant to meet Best Technology Available (BTA) for minimizing Adverse Environmental Impact (AEI) as set forth in Section 316(b) of the Clean Water Act (CWA). Section 316(b) of the CWA requires that the location, design, construction, and capacity of cooling water intake structures (CWISs) reflect the BTA for minimizing AEI. The Applicant submitted the document, titled *Supplemental Information for 316(b) Determination* and a *Cooling Water Intake Technology Evaluation for Oak Grove Steam Electric Station* on June 11, 2008, as part of the application received on June 25, 2007, in which is included a description of how the facility meets Best Technology Available (BTA) for minimizing Adverse Environmental Impact (AEI).

COMMENT 14:

Commenter states that the proposed permit fails to provide in clear and enforceable terms the character of the discharge.

RESPONSE 14:

This comment is general in nature and does not provide enough information for the ED to know what the exact concern is. Therefore, the ED acknowledges this comment but is unable to respond to this comment specifically. In general, wastewater permits authorize the discharge of certain wastewaters meeting permitted effluent limitations developed based on the types of waste streams proposed to be discharged.

This proposed permit authorizes the discharge of once-through cooling water, auxiliary cooling water, and previously monitored effluents (PMEs via Internal Outfalls 101, 201, 301 and 401) at a daily maximum flow not to exceed 1,610 million gallons during any 24-hour period via Outfall 001; coal pile runoff, low volume waste, and storm water from the lignite/limestone storage area on an intermittent and flow variable basis via Outfall 002; low volume waste, metal cleaning waste, flue gas desulfurization (FGD) system wastewater, bottom ash contact water (ash transport water), and storm water runoff on an intermittent and flow variable basis via Outfall 101; coal pile runoff, low volume waste, and storm water from the lignite/limestone storage area on an intermittent and flow variable basis via Outfall 201; treated domestic wastewater at a daily average flow not to exceed 0.025 MGD via Outfall 301; and low volume waste, metal cleaning waste, flue gas desulfurization (FGD) system wastewater, bottom ash contact water (ash transport water), and storm water runoff from the FGD Ponds B and C area on an intermittent and flow variable basis via Outfall 401. These wastewaters authorized for discharge are stated on the Effluent Limitations and Monitoring Requirements pages applicable to the associated outfall along with the effluent limits, monitoring requirements, measurement frequency, and sample type characteristic of these wastestreams.

COMMENT 15:

Commenter states that the proposed permit fails to provide in clear and enforceable terms the character of the flow limitations.

RESPONSE 15:

This comment is general in nature and does not provide enough information for the ED to know what the exact concern is. Therefore, the ED acknowledges this comment but is unable to respond to this comment specifically. In general, as stated in *Response 14* wastewater permits authorize the discharge of certain wastewaters meeting permitted effluent limitations developed based on the types of waste streams proposed.

This proposed permit authorizes discharge of once-through cooling water, auxiliary cooling water, and previously monitored effluents (PMEs via Internal Outfalls 101, 201, 301 and 401) at a daily maximum flow not to exceed 1,610 million gallons during any 24-hour period via Outfall 001. The discharge via Outfall 001 is characterized as continuous and the permit limits the volume of discharge and requires reporting of the daily average and daily maximum flow in million gallons per day. Coal pile runoff, low volume waste, metal cleaning waste, flue gas desulfurization (FGD) system wastewater, bottom ash contact water (ash transport water), and storm water are intermittently produced and variable in nature and are better characterized as discharging on an intermittent and flow variable basis via Outfalls 002, 101, 201; and 401. When discharge occurs at these outfalls, the permit requires reporting of the daily average and daily maximum flows in million gallons per day (MGD). Treated domestic wastewater from an activated sludge treatment plant is better characterized by a daily average flow not to exceed 25,000 gallons per day, based on the treatment capacity of the plant. The discharge via Outfall 301 is characterized as continuous and the permit limits the volume discharged and requires reporting of the daily average and daily maximum flows in MGD via Outfall 301.

COMMENT 16:

Commenter states that the draft permit fails to comply with federal and state enforceability requirements because the application and draft permit fail to require necessary information, reporting and/or recordkeeping.

RESPONSE 16:

The Applicant is required to collect and analyze samples of wastewater and to provide monthly Discharge Monitoring Reports (DMRs) to the TCEQ that include the results of the analyses. A permittee may either collect and analyze the effluent samples itself, or it may contract with a third party for either or both the sampling and analysis. However, all samples must be collected and analyzed according to 30 TAC Chapter 319, Subchapter A - Monitoring and Reporting System. A permittee is also required to notify the TCEQ in the event that the effluent sampled fails to meet permit limitations. As provided by state law, a permittee is subject to administrative, civil, and criminal penalties, for knowingly making any false statement, representation, or certification on any report, record, or document submitted or required to be maintained by the permit.

Finally, TCEQ regional offices conduct periodic inspections of facilities, and also based on complaints received from the public. If the proposed permit is issued, to report complaints about the facility please contact the TCEQ at 1-888-777-3186 to reach the appropriate TCEQ regional office (i.e., TCEQ Region 9 - Waco at 254-751-0335) or by e-mail at

cmplaint@TCEQ.state.tx.us. Noncompliance with TCEQ rules or the permit may result in an enforcement action.

COMMENT 17:

Commenter states that the draft permit does not require sufficient frequency and type of monitoring (e.g., whole toxicity monitoring (Whole Effluent Toxicity, WET testing, etc.) to detect violations or evaluate water quality criteria, degradation, and/or toxicity as the conditions of the discharge in the receiving waters change from time to time.

RESPONSE 17:

This comment is general in nature and does not provide enough information for the ED to know what the exact concern is. Therefore, the ED acknowledges this comment but is unable to respond specifically. In general, the WET testing frequency and type are in accordance with federal requirements as set by EPA Region 6. Specifically, the permittee is required to perform chronic (7-day) WET testing at the highest dilution possible (100% effluent). The critical dilution was in accordance with the critical conditions memo, which is used to assess the need for other aquatic-life water-quality-based effluent limits during the "low flow" or critical conditions of the receiving water. In this case, since the permitted discharge is greater than 100 MGD and goes into a lake (an impounded reservoir), the default critical dilution is also the most stringent one, 100% effluent, which is in accordance with the *Procedures to Implement the Texas Surface Water Quality Standards*, January 2003 (Regulatory Guidance document RG-194).

COMMENT 18:

Commenter states that the sampling for Outfall 001 should be initiated immediately upon any amount of discharge from this outfall. The draft permit provision, however, essentially defines the initial discharge as the "generating facility start-up (i.e., steam to turbine)" which may or may not actually be the first time industrial wastewater is discharged in any amount from this outfall. For example, some wastewater discharge may occur during construction and/or pre-start up testing which may or may not be considered by the Applicant as "facility start-up (i.e., steam to turbine)". See, Item 15 on page 14 of the draft permit.

RESPONSE 18:

As discussed in *Response Nos. 7 and 8*, the facility recently began operation and commenced discharging. As required by the current permit, *Requirement No. 15*, the Applicant submitted sampling data. This is also the effluent analyses required in the application. As discussed previously, the effluent data from Outfall 001 was screened against the calculated water quality-based effluent limitations found in both the current permit (SOB/Technical Summary) and the proposed permit (SOB/Technical Summary). No pollutant exceeded 70% of the calculated daily average water quality-based effluent limitation. Therefore, the applicant is in compliance with the data sampling requirements.

COMMENT 19:

Commenter states that the draft permit removes 24-hour and other requirements for monitoring, analysis, recordkeeping and reporting concerning violations of maximum limitations including,

but not limited to, selenium and other toxic pollutants. See, e.g., changes from existing permit 16, page 14.

RESPONSE 19:

The current permit *Other Requirement No. 16*, on page 14 of the existing permit, requires reporting of violations of daily maximum effluent limitations and compliance with the permit limitations on the minimum analytical level (MAL) for various parameters. This requirement has been revised by removing total selenium and adding total iron. The current permit includes effluent limitations for total selenium at existing Outfalls 005 and 006. These individual outfalls have not been continued in the proposed permit.

In this major amendment action the Applicant requested, among other things, to delete Outfall 005, move the discharge location for Outfall 006 to the Primary Discharge Canal prior to discharge via Outfall 001; renumber Outfall 006 to internal Outfall 101; and add low volume waste and metal cleaning waste on an intermittent and flow variable basis via internal Outfall 101. As previously discussed, water quality-based effluent limitations are applied at the external Outfall 001 discharge location. Technology-based effluent limitations are applied at the internal Outfall 101 discharge location. Technology-based effluent limitations for the discharge of low volume waste, metal cleaning waste, flue gas desulfurization (FGD) system wastewater, bottom ash contact water (ash transport water), and storm water runoff on an intermittent and flow variable basis via Outfall 101 were determined in *Appendix A* of the SOB/Technical Summary.

Technology-based limitations are based on the criteria delineated at 40 CFR 423.15(c) for the discharge of low volume wastes, 40 CFR 423.15(d) for the discharge of metal cleaning waste, at 40 CFR 423.15(f) for the discharge of ash transport water, and BPJ for the discharge of flue gas desulfurization and storm water runoff. The daily average copper limit is in accordance with 40 CFR § 423.15(d) and is based upon 30 TAC § 319.22. Therefore, the technology-based effluent limitations at internal Outfall 101 were determined to be as follows:

Technology-based effluent limitations at Internal Outfall 101

Flow (MGD) = Report daily average, Report daily maximum

TSS = 30 mg/l daily average, 100 mg/l daily maximum

Oil and Grease = 15 mg/l daily average, 20 mg/l daily maximum

Total Copper = 0.5 mg/l daily average, 1.0 mg/l daily maximum

Total Iron = 1.0 mg/l daily average, 1.0 mg/l daily maximum

pH (standard units) = Between 6.0 SU. minimum and 9.0 SU maximum

Other Requirement No. 16, in the proposed permit includes the toxic parameters (i.e., total copper and total iron) applicable to the wastewaters authorized for discharge in the draft permit.

COMMENT 20:

Commenter states that the draft permit improperly relaxes analysis required for iron and copper. See, e.g., changes from existing permit Item 17, page 14.

RESPONSE 20:

Other Requirement No. 17 on page 14 of the existing permit (which addresses Outfall 007 in the current permit) has been continued as *Other Requirement No. 17* on page 15 of the proposed permit (which addresses internal Outfall 401).

COMMENT 21:

Commenter states that the proposed permit improperly relaxes existing and requisite permit conditions.

RESPONSE 21:

This comment is general in nature and does not provide enough information for the ED to know what the exact concern is. Therefore, the ED acknowledges this comment but is unable to respond to this comment specifically. Please see *Response 19* as it relates to changes associated with the current and proposed permits, *Other Requirement No. 16*. Please see *Response 20* as it relates to the current and proposed permits *Other Requirement No. 17*. Please see *Response 35* as it relates to pH limits in the current and proposed permits. Please see *Response 36* as it relates to authorized wastewaters in the current and proposed permits. Please see *Response 37* as it relates to changes associated with monitoring, analysis, record keeping and recording. Finally, please see *Response 39* as it relates to modified and deleted outfalls.

COMMENT 22:

Commenter states that the Applicant's compliance history at this or other facilities require denial of the application, or at the very least, close scrutiny of the information in the application and additional conditions and terms in the proposed permit minimize the likelihood of future violations.

RESPONSE 22:

During the technical review of the application, a compliance history review is conducted on the Applicant and the site based on the criteria in 30 TAC Chapter 60. Section 60.1(a)(7)(A) states, "Beginning September 1, 2002, this chapter shall apply to the use of compliance history in agency decisions relating to: applications submitted on or after this date for the issuance...." In addition, 30 TAC § 60.2(a) states "Beginning September 1, 2002, the Executive Director shall evaluate the compliance history of each site and classify each site and person as needed for the actions listed in § 60.1(a)(1) of this title (relating to Compliance History)."

The compliance history is reviewed for the Applicant and site for the five-year period prior to the date the permit application was received by the Executive Director. 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, investigations, notices of violations, audits and violations disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution reduction programs and early compliance.

This permit application was received after September 1, 2002, and the Applicant and site have been rated and classified pursuant to 30 TAC Chapter 60. The Applicant and site may have one of the following classifications and ratings:

- High: rating < 0.10 (above-average compliance record)
- Average by Default: rating =3.01 (these are for sites which have never been investigated)
- Average: 0.10 < rating < 45 (generally complies with environmental regulations)
- Poor: 45 < rating (performs below average)

This site (i.e., Oak Grove Steam Electric Station, regulated entity number RN100216191) has a classification of "High" and a rating of 0.00. The Applicant (i.e., Oak Grove Management Company LLC, customer number CN602881955) has a classification and rating, which is the average of the ratings for all sites the Applicant owns. The Applicant has a classification of "Average" and a rating of 1.50. Based on this classification and rating, the Executive Director has determined that the Applicant is operating in compliance with rules and regulations, and this permit should be issued.

Please note the compliance history is available to the public and may be viewed on the TCEQ website at <http://www.tceq.state.tx.us/compliance/enforcement/history> .

COMMENT 23:

Commenter states that the application and draft permit fail to comply with requisite federal and state laws and regulations concerning Best Technology Available (BTA).

RESPONSE 23:

The proposed permit requires the Applicant to meet Best Technology Available (BTA) for minimizing Adverse Environmental Impact (AEI) as set forth in Section 316(b) of the Clean Water Act (CWA). Section 316(b) of the CWA requires that the location, design, construction, and capacity of cooling water intake structures (CWISs) reflect BTA for minimizing AEI.

There are currently no rules implementing Section 316(b) for existing facilities that use cooling water intake structures to withdraw cooling water at a rate of 50 million gallons a day or greater (large existing facilities). An attempt by the Environmental Protection Agency (EPA) to promulgate rules governing large existing facilities was thwarted when the Second Circuit Court of Appeals remanded a large portion of the rules. *See Entergy Corporation v. Riverkeeper, Inc., et al*, 129 S.Ct. 1498, 1505 (2009). EPA decided to suspend the rules on July 9, 2007, 72 Fed. Reg. 37107. By default, the only rule currently applicable to cooling water intake structures at large existing facilities is 40 CFR 125.90(b). This rule provides for regulating existing CWIS on a case by case basis using Best Professional Judgment (BPJ). The TCEQ rules adopt by reference the EPA rules on CWISs for existing facilities and therefore these rules codified at 30 Tex. Admin. Code § 308.91 are no longer effective.

EPA developed a document titled *EPA Draft Fact Sheet for Development of BPJ-Based Section 316(b) NPDES Permit Conditions* (Draft Fact Sheet, 12/07 EPA FS), to be used by permit writers in developing BPJ-Based Section 316(b) NPDES permit conditions. Based on the recommendations in the Draft Fact Sheet, the TCEQ included a discussion of the determination of BTA to minimize AEI in *Appendix A* of the SOB/Technical Summary. The Applicant submitted the document, titled *Supplemental Information for 316(b) Determination and a Cooling Water Intake Technology Evaluation for Oak Grove Steam Electric Station*, as part of the application received on June 25, 2007, in which is included a description of how the facility meets Best Technology Available (BTA) for minimizing Adverse Environmental Impact (AEI).

Based on the recommendations in the Draft Fact Sheet, the TCEQ included a discussion of the determination of BTA to minimize AEI in *Appendix A* of the SOB/Technical Summary. This discussion concluded that Oak Grove Steam Electric Station (OGSES) operates on Twin Oak Reservoir, a reservoir built specifically as an industrial cooling water impoundment and that there is no public access to the reservoir. OGSES and the existing CWISs are located on the southern end of the reservoir. The station withdraws cooling water from the reservoir at the end of a dredged intake channel. The CWISs were built in the 1980's and each of the six intake bays is currently equipped with one vertical circulating water pump, located downstream of the traveling water screens. Each of the six circulating water pumps has a rated capacity of 387.7cfs (170,000 gpm). There is a bar rack with 4-inch openings in front of each intake which prevents large debris from reaching the traveling screens. The six conventional traveling screens are located upstream of the circulating cooling water pumps and downstream of the bar racks. Each screen is approximately 14-feet wide and the panels are composed of square-meshed wire that has 3/8-inch openings. There are fish escape openings between the individual bays and at each end of the intake structure designed to facilitate fish escape before they reach the traveling screens and a separate fish trough for collection of fish washed from the traveling screen surface allowing return to the reservoir.

Based on the recommendations in the Draft Fact Sheet, coordination between EPA-Region 6 and TCEQ, and BPJ, it was determined that the design, construction, and capacity of the existing CWISs reflect BTA for minimizing AEI.

COMMENT 24:

Commenter states that the application and draft permit fail to minimize adverse environmental impacts.

RESPONSE 24:

As detailed in *Response No. 23*, it was determined that the design, construction, and capacity of the existing CWISs reflect BTA for minimizing AEI. To ensure that the Applicant continued to meet BTA for minimizing AEI the following *Other Requirement No. 18* was included in the proposed permit:

COOLING WATER INTAKE STRUCTURE REQUIREMENTS: 316(b) of the CWA

The permittee shall continue to operate and maintain the cooling water intake structure (CWIS) configuration consistent with the documents, titled *Supplemental*

Information for 316(b) Determination and a Cooling Water Intake Technology Evaluation for Oak Grove Steam Electric Station, submitted as part of the application received on June 25, 2007, in which is included a description of how the facility meets Best Technology Available (BTA) for minimizing Adverse Environmental Impact (AEI).

Within six months of permit issuance, the permittee shall submit an Impingement Mortality and Entrainment Characterization Study, to the Water Quality Division. If it is later determined that the current CWIS configuration is not representative of BTA for minimizing AEI, this permit may be reopened to incorporate additional requirements.

COMMENT 25:

Commenter states that the draft permit improperly undermines public participation by postponing analysis and determinations concerning Best Technology Available (BTA) analysis for minimizing Adverse Environmental Impact (AEI) until after the permit amendment and renewal is issued by the agency.

RESPONSE 25:

The Executive Director disagrees. The Executive Director has worked with the Environmental Protection Agency to determine the best way to proceed on this issue in the absence of federal statutes and rules for large existing facilities. The Executive Director addressed the issues in a "conditional/no objection" letter from the EPA and prepared a new Statement of Basis and draft permit. The amended Statement of Basis and proposed permit containing the discussion of this issue, the requirement in the permit, and where the applicant's report could be found was mailed to landowners and published in the newspaper.

COMMENT 26:

Commenter states that the draft permit allows the applicant to withhold information it unilaterally deems to be not "applicable." See e.g., item 18, Cooling Water Intake Structure Requirements; 316(b) of the Clean Water Act

RESPONSE 26:

The Executive Director disagrees. As discussed in *Response No. 23*, EPA currently has no rules implementing Section 316(b) for existing facilities that use CWISs that withdraw cooling water at a rate of 50 million gallons a day or greater. By default, the only rule currently applicable to cooling water intake structures at large existing facilities is 40 CFR 125.90(b). This rule provides for regulating existing cooling water intake structures (CWIS) on a case by case basis using Best Professional Judgment (BPJ). In addition to the determination that the existing CWISs reflect BTA for minimizing AEI, additional information such as the Impingement Mortality and Entrainment Characterization Study to be submitted by the Applicant can be reviewed and the permit may be reopened to incorporate additional requirements.

COMMENT 27:

Commenter asserts that the application and draft permit fail to include all necessary information, analysis and requirements to comply with the elements of the antidegradation policy and requisite analysis with regard to any pollutant.

RESPONSE 27:

The Executive Director disagrees. The application includes information necessary to make the antidegradation policy determination, and the proposed permit implements that analysis. At a minimum, the review includes an analysis of the existing uses of the receiving waters, which aids in establishing the appropriate discharge limitations, and a waste load analysis, which determines the quality of the water discharged by the Applicant into the receiving stream, 30 TAC § 307.5(c). The standards established under the permit are determined by the water quality and quantity of the receiving stream and the impacts that the effluent may have on the receiving stream based on its volume, the flow rate and the type of waste being discharged by the facility. This information is used by the agency to develop discharge limitations that will protect the quality of the water so that the use of the water will not be impaired and the health and safety of individuals and wildlife that may come into contact with the water is protected.

COMMENT 28:

Commenter asserts that the application and draft permit fail to include all necessary information, analysis and requirements to comply with all requisite water quality criteria.

RESPONSE 28:

As detailed in *Response 8*, the Water Quality Division has determined that the draft permit has been developed in accordance with the TSWQS, which include the water quality criteria and ensures that the effluent discharge is protective of aquatic life, human health, and the environment.

COMMENT 29:

Commenter states that the public notices regarding this permit application have been inadequate and/or incorrect and therefore, TCEQ must republish notice to allow the public its opportunity to review the complete application and provide meaningful and informed comments.

RESPONSE 29:

This Comment is general in nature and does not provide enough information for the ED to know what the exact concern is. Therefore, the ED acknowledges this comment but is unable to respond to this comment specifically. As discussed in *Response Nos. 10 and 11*, the NORI was published to notify the public of the Applicant's intent and the NAPD, which in this case was published twice, was to notify the public of the requested amendments to the permit and the Executive Director's preliminary decision concerning these changes. All the notices provided the location for viewing and copying of the application as it existed at the time of publication. In addition, both NAPDs provided the location for viewing and copying of the draft permit and SOB/Technical Summary applicable at the time of publication (i.e., at the Robertson County

Courthouse - County Clerk's Office, 102 East Dechard Street, Suite 104, Franklin, Texas). Also, the public had 30 days from the date of newspaper publication of the notice to submit written public comments to the TCEQ's Office of the Chief Clerk by mail, facsimile, or as recently initiated at the TCEQ and included in the NAPD published on March 18, 2009, electronically (at www.tceq.state.tx.us/about/comments.html).

COMMENT 30:

Commenter states that the applicant's and TCEQ's actions have caused the public to review and comment on an incomplete application and draft permit in violation of federal and state laws and regulations as illustrated by the issues identified in the other comments discussing missing application information and technical analysis.

RESPONSE 30:

The draft permit has been processed according to the standard TCEQ procedures used for processing other applications for wastewater discharge and according to all applicable rules and requirements of the State of Texas. TCEQ staff reviewed the application and concluded that all the information required in the application was submitted.

COMMENT 31:

Commenter states that the proposed permit fails to provide in clear and enforceable terms limits specifically keyed to characteristics for treatment and disposal.

RESPONSE 31:

The Oak Grove Steam Electric Station is a steam electric generating facility subject to 40 CFR Part 423 - Steam Electric Power Generating Point Source Category guidelines. The effluent limitations contained in the draft permit are consistent with the federal technology-based effluent guidelines. In general, technology-based effluent limitations are national standards that are developed by the U.S. EPA on an industry-by-industry basis, and are intended to represent the greatest pollutant reductions that are economically achievable for an industry. To develop these technology-based regulations, the EPA gathers information on a particular industry, identifies the best available technology that is economically achievable for that industry, and sets regulatory requirements based on the performance of that technology. The effluent guidelines do not require facilities to install a particular type of technology; however, the regulations do require facilities to achieve the regulatory standards that were developed based on a particular type of technology.

COMMENT 32:

Commenter states that the proposed permit fails to provide in clear and enforceable terms rates of application to the waters including, but not limited to, the quantity, quality, flow, location of disposal and conditions for disposal.

RESPONSE 32:

Pursuant to 30 TAC § 307.5 and the TCEQ Implementation Procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no lowering of water quality by more than a de minimis extent is expected in Twin Oak Reservoir, Duck Creek, and the Navasota River Below Lake Limestone, which has been identified as having high aquatic life uses.

The effluent limits and/or monitoring requirements in the draft permit are set to maintain and protect the existing instream uses. The limitations and monitoring requirements established in the draft permit are monitored at the locations specified for each outfall. The final effluent limitations are established in the proposed permit as follows:

<u>Outfall Parameter</u>	<u>Daily Average, mg/l</u>	<u>Daily Maximum, mg/l</u>
001 Flow (MGD)	(Report)	(1,610)
Temperature (°F)	110 °F	115 °F
Free Available Chlorine	0.2 mg/l (223 lbs/day)	0.5 mg/l (559 lbs/day)
Total Residual Chlorine	N/A	0.2 mg/l (447 lbs/day)
002 Flow (MGD)	(Report)	(Report)
Total Suspended Solids (TSS)	N/A	50
Oil and Grease	N/A	20
pH, standard units (SU)	(6.0 SU minimum)	(9.0 SU maximum)
101 Flow (MGD)	(Report)	(Report)
Total Suspended Solids (TSS)	30	100
Oil and Grease	15	20
Iron, Total	N/A	1.0 mg/l
Copper, Total	0.5 mg/l	1.0 mg/l
pH, standard units (SU)	(6.0 SU minimum)	(9.0 SU maximum)
201 Flow (MGD)	(Report)	(Report)
Total Suspended Solids (TSS)	N/A	50
Oil and Grease	N/A	20
pH, standard units (SU)	(6.0 SU minimum)	(9.0 SU maximum)
301 Flow (MGD)	(0.025)	(0.030)
Biochemical Oxygen Demand,	20	45
Total Suspended Solids (TSS)	20	45
Total Residual Chlorine	1.0 mg/l (minimum)	N/A
pH, standard units (SU)	(6.0 SU minimum)	(9.0 SU maximum)
401 Flow (MGD)	(Report)	(Report)
Total Suspended Solids (TSS)	30	100
Oil and Grease	15	20
Iron, Total	N/A	1.0 mg/l
Copper, Total	0.5 mg/l	1.0 mg/l
pH, standard units (SU)	(6.0 SU minimum)	(9.0 SU maximum)

COMMENT 33:

Commenter states that the proposed permit fails to provide in clear and enforceable terms adequate monitoring and reporting requirements including, but not limited to, sufficient frequency and type of monitoring to detect violations.

RESPONSE 33:

The Executive Director disagrees. The draft permit was developed in accordance with the Texas Surface Water Quality Standards. These standards are designed to maintain the quality of water in the state and to be protective of human health and the environment. The proposed discharge will be monitored pursuant to the conditions set out in the "Monitoring and Reporting Requirements" section of the proposed permit and 30 TAC Chapter 319.

COMMENT 34:

Commenter states that the application inadequately describes the soils, groundwaters, surface waters, or the location of wells, faults, fractures, sink holes, wetlands, etc.

RESPONSE 34:

The Water Quality Division has determined that the draft permit has been developed in accordance with the Texas Surface Water Quality Standards, which ensure that the effluent discharge is protective of aquatic life, human health, and the environment. The review process for surface water quality is conducted by the Standards Implementation Team and Water Quality Assessment Team surface water modelers. The Water Quality Division has determined that if the surface water quality is protected, then the groundwater quality in the vicinity will not be impacted by the discharge.

In addition, 30 TAC § 309.12 deals with the site selection for wastewater treatment plants. Section 309.12 prohibits the Commission from issuing a permit for a new facility or for the substantial change of an existing facility unless it finds that the proposed site, when evaluated in light of the proposed design, construction or operational features, minimizes possible contamination of surface water and groundwater. Since this is a major amendment to an existing permitted facility which continues the operations in the existing permit, Section 309.12 is not applicable to this application.

COMMENT 35:

Commenter states that the application and draft permit improperly removes prior effluent limitations including, but not limited to, pH limitations.

RESPONSE 35:

As detailed in *Response 32*, all internal outfalls (i.e., Outfalls 101, 201, 301, and 401) that discharge prior to Outfall 001, require the pH to not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per week when discharge occurs, by grab sample. Outfall 002 also requires the pH to not be less than 6.0 standard units nor greater than

9.0 standard units and shall be monitored once per week when discharge occurs, by grab sample. The technology-based limitations specifically exempt once through cooling water from maintaining the pH between 6.0 to 9.0 standard units based on the criteria delineated at 40 CFR § 423.12(b)(1). The current permit does not require an effluent limit or monitoring requirement for pH at existing Outfall 001, which has been continued at proposed Outfall 001, in the proposed permit.

COMMENT 36:

Commenter asserts that the application and draft permit inadequately address the inclusion of additional wastestreams including, but no limited to, bottom ash contact water, FDG system wastewater, low volume waste sources, metal cleaning wastewater, coal pile runoff.

RESPONSE 36:

The current permit authorizes the discharge of once-through cooling water and auxiliary cooling water at Outfall 001; coal pile runoff and storm water runoff from the lignite/limestone storage area at Outfall 002; treated domestic wastewater at Outfall 003; low volume waste and storm water runoff at Outfall 004; low volume waste, metal cleaning waste, ash transport water (i.e., bottom ash contact water), and storm water runoff at Outfall 005; flue gas desulfurization system wastewater, ash transport water (i.e., bottom ash contact water), and storm water runoff at Outfall 006; and storm water runoff from the railroad area at Outfall 007.

The proposed permit authorizes the discharge of once-through cooling water, auxiliary cooling water, and previously monitored effluents (PMEs via internal Outfalls 101, 201, 301 and 401) at Outfall 001; coal pile runoff, low volume waste, and storm water from the lignite/limestone storage area at Outfall 002; low volume waste, metal cleaning waste, flue gas desulfurization (FGD) system wastewater, bottom ash contact water (ash transport water), and storm water runoff at Outfall 101; coal pile runoff, low volume waste, and storm water from the lignite/limestone storage area at Outfall 201; treated domestic wastewater at Outfall 301; and low volume waste, metal cleaning waste, flue gas desulfurization (FGD) system wastewater, bottom ash contact water (ash transport water), and storm water runoff from the FGD Ponds B and C area at Outfall 401.

The “ash transport water” authorized for discharge via Outfalls 005 and 006 of the existing permit has been clarified “as bottom ash contact water” in the draft permit. All wastewaters authorized for discharge in the draft permit are also authorized for discharge in the existing permit.

COMMENT 37:

Commenter asserts that the application and draft permit improperly delete and/or redesignate numerous discharge points, and monitoring locations which also adversely impact the adequacy of the monitoring, analysis, record keeping and recording to be protective of the public and the environment.

RESPONSE 37:

The current permit and the proposed permit authorize the monitoring location for Outfall 001 after the drop weir located in the unnamed Final Discharge Canal and prior to entering the main body of Twin Oak Reservoir with the same monitoring, analysis, record keeping and recording requirements. The current permit and the proposed permit authorize the monitoring location for Outfall 002 following discharge from the Lignite Retention Pond prior to mixing with any other waters in the drainage ditch (which discharges to Twin Oak Reservoir). The proposed permit has the additional internal Outfall 201, for the same discharge authorized at Outfall 002, so that the facility has the flexibility to discharge from the Lignite Retention Pond to the Primary Discharge Canal. The current permit and the proposed permit require the same monitoring, analysis, record keeping and recording at Outfalls 002 and 201.

The current permit Outfall 003 and the proposed permit internal Outfall 301 authorize the discharge of treated domestic wastewater at the point where the domestic wastewater treatment plant discharges. Both outfalls have the same monitoring, analysis, record keeping and recording requirements except the maximum chlorine residual limit of 4.0 mg/l has been removed from the proposed permit and the minimum chlorine concentration monitoring frequency has been reduced from five times per week to once per week at Outfall 301.

The maximum chlorine residual limit was eliminated at this internal outfall per the applicant's request as the critical limit for such an outfall is the lower limit of 1.0 mg/l chlorine residual which is used to assure control of potential pathogens. Also, the maximum concentration of chlorine will be consumed by the flow of once-through cooling water of 1,610 million gallons prior to discharge via Outfall 001, which also has a more stringent maximum chlorine limitation of 0.2 mg/l. The applicant also requested the minimum chlorine residual concentration sampling frequency be reduced to once per week, based on a good compliance history and to be consistent with the other monitoring frequencies for Outfall 301.

The applicant requested to delete current Outfalls 004 and 005, move the discharge locations for Outfalls 006 and 007 to the Primary Discharge Canal prior to discharge via Outfall 001, renumber Outfall 006 to internal Outfall 101 and Outfall 007 to internal Outfall 401, add low volume waste and metal cleaning waste via internal Outfall 101, and add low volume waste, metal cleaning waste, flue gas desulfurization (FGD) system wastewater, bottom ash contact water (ash transport water) via internal Outfall 401. These changes were requested by the Applicant based on facility operating decisions and actually reduce the number of total outfalls by two. As discussed in *Response 36*, no additional waste streams have been added to the proposed permit that were not previously authorized under the current permit.

The Executive Director can only evaluate the Applicant's requests under Chapter 26 of the Texas Water Code. The Executive Director reviews the Applicant's requests and places discharge limitations in the permit to protect aquatic life, human health and the environment. Under 30 TAC § 307.5, the TCEQ must maintain and protect the water quality of the state under a policy of anti-degradation.

COMMENT 38:

Commenter states that they question the adequacy of the impoundments, outfall canals, and outfall routes to protect the surface and groundwaters from contamination, including, but not limited to, the construction, liners, berms, etc.

RESPONSE 38:

The proposed permit requires in *Other Requirement No 11*, that prior to use, all process wastewater ponds shall have liners to be constructed with a thickness of 3 feet or greater or its equivalency in other materials, and must have a hydraulic conductivity no greater than 1×10^{-7} centimeters per second (cm/sec). This means that the liquid in the pond can pass through the liner no faster than 1 centimeter per 10,000,000 seconds (that is approximately 16.5 weeks or nearly 4 months per centimeter). The Applicant is required to notify the TCEQ Regional Office upon completion of construction of the pond and at least a week prior to its use. Certification of the lining specifications shall be provided by a Texas licensed professional engineer and shall be available for inspection by TCEQ personnel upon request. For new construction, the certification and the test results of soils forming the bottom and sides of the pond shall be submitted to the TCEQ, Wastewater Permitting Section (MC-148) and Regional Office for review prior to discharging any wastewaters into the ponds.

COMMENT 39:

Commenter asserts that the application and draft permit improperly modify or delete outfall parameters including, but not limited to: Biochemical Oxygen Demand (BOD) monitoring, chlorine residual monitoring, maximum chlorine residual limits.

RESPONSE 39:

The applicant requested to recalculate effluent limitations with adjustment and/or removal of effluent limitations as applicable. The recalculated effluent limitations at Outfall 001 include an increase in free available chlorine from a daily average loading of 204 lbs/day to 223 lbs/day, an increase in free available chlorine from a daily maximum loading of 511 lbs/day to 559 lbs/day, and an increase in total residual chlorine loadings from a daily maximum loading of 408 lbs/day to 447 lbs/day, based on the increase in flow. The concentrations of the constituents remain the same. Please see *Response No. 37* for discussions related to outfall modification and removal and the reduction in chlorine residual monitoring and removal of the maximum chlorine residual limit at internal Outfall 301.

COMMENT 40:

Commenter states that the application and draft permit fail to adequately address the individual and cumulative effects of the discharged pollutants (including, but not limited to, selenium, mercury, radioactive pollutants, etc.) and the potential adverse impacts on the public and environment. The inadequacies include, but are not limited to, effluent limitations, monitoring analysis, record keeping and reporting.

RESPONSE 40:

The TPDES permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and costal waters. Air quality and solid waste issues are outside of the scope of normal evaluations for a wastewater discharge permit application. As detailed in *Response 7*, the effluent data from Outfall 001 was screened against the calculated water quality-based effluent limitations found in the draft permit SOB/Technical Summary (See *Appendix B - TEXTOX Menu 8* for discharges to an intermittent stream within three miles of a Lake or Reservoir). No pollutant exceeded 70% of the calculated daily average water quality based effluent limitation.

COMMENT 41:

Commenter states at the end of their comment letter that these comments are in addition to and supplement "any public comments and/or hearing requests provided previously or subsequently. Likewise, these public comments and hearing requests incorporate by reference any issues, comments or concerns provided previously or subsequently by other individuals or organizations protesting this application and issuance of the proposed permit as well as any issues of concern raised by EPA."

RESPONSE 41:

The Executive Director responds that there were no other public comments or requests for hearing. The proposed permit complies with the applicable statutes for cooling water intake structures; the EPA has reviewed both the "draft permit" and "proposed permit"; and EPA gave the TCEQ the clearance to issue the Oak Grove permit on October 23, 2008 contingent upon inclusion of the negotiated language in the permit as stated in the "conditional no objection" letter. The clearance to issue the proposed permit was later affirmed by EPA in an email to Melinda Luxemburg on January 30, 2009. The Commission has addressed the concerns raised by EPA by incorporating EPA's requested changes into the proposed permit. The Executive Director believes that all issues timely raised by the EPA have been resolved.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

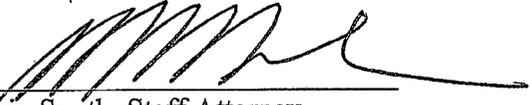
No changes were made in response to public comments.

Respectfully submitted,

Texas Commission on Environmental Quality

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QUALITY

CERTIFICATE OF SERVICE

I certify that on November 4, 2009 the "Executive Director's Response to Public Comment" for Permit No. WQ0001986000 was filed with the Texas Commission on Environmental Quality, Office of the Chief Clerk.


Robin Smith, Staff Attorney
Environmental Law Division
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Mr. Lawrence Starfield
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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

November 4, 2009

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Attention: Docket Clerk, MC 105
P.O. Box 13087
Austin, Texas 78711-3087

Re: SOAH Docket No. 582-09-3322
TCEQ docket No. 2009-0398-IWD
TPDES Permit No. WQ0001986000
Oak Grove Management Company, LLC

Dear Ms. Castañuela:

Enclosed for filing please find the Executive Director's Response to Public Comment (RTC). The RTC is also being forwarded to the Honorable Judge Rebecca Smith for inclusion with the record of proceeding in this case. The RTC is intended to supplement the administrative records in this case. If you have any questions, please do not hesitate to call me at (512) 239-0463.

Sincerely,

A handwritten signature in black ink, appearing to read "Robin Smith".

Robin Smith
Attorney
Environmental Law Division

Enclosure

cc: Mailing List

2009 NOV -4 PM 3:15
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY