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MEDIA ADVISORY

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Texas Clean Air Cities Coalition Requests That Judges Take Another Look

Coalition Files Motion To Remand TXU's Oak Grove Plant Permit Case

Oak Grove would rank in nation's Top Dirtiest for Mercury and Greenhouse Gases

(Austin)—The Texas Clean Air Cities Coalition (TCACC) has officially filed a motion to remand TXU's Oak Grove permit case back to the Administrative Law Judges (ALJs) at the State Office of Administrative Hearings (SOAH).

Oak Grove was the first permit application of 11 fast-tracked by Gov. Rick Perry when it was heard by SOAH in July 2006. The SOAH judges recommended that the Oak Grove permit be denied, and the Texas Commission on Environmental Quality (TCEQ) is scheduled to review that recommendation at its upcoming June 13th meeting.

If built, Oak Grove will emit more mercury than any other coal plant in the United States save three – the Scherer plant in Georgia, the Miller plant in Alabama and TXU's Martin Lake plant in East Texas, according to a 2006 national ranking of coal plant emissions by the Environmental Integrity Project. Martin Lake is the worst mercury emitter in the country, producing 1,744 pounds of mercury a year. Oak Grove will emit 1,440 pounds.

The State of Texas is currently under 11 separate fish advisories for lakes that are polluted with mercury and are dangerous to people's health if eaten more than sparingly. Seventy percent of the state's manmade mercury comes from its power plants.

Oak Grove will also rank 20th dirtiest in the country for carbon dioxide emissions. Carbon dioxide is the leading greenhouse gas that is now widely believed to cause global warming. Although coal-fired power plants account for just over half the electricity produced in the U.S. each year, they have been responsible for over 83 percent of the CO₂ pollution since 1990, according to the Sierra Club.

Oak Grove will emit 16.5 million tons per year of CO₂. Only three Texas power plants rank worse than Oak Grove for CO₂ – two of which are TXU's Monticello at No.13 and TXU's Martin Lake at No.5, both of which are located in East Texas.

Earlier this month, the Associated Press analyzed the U.S. Energy Department's latest numbers (from 2003) for state-by-state emissions of carbon dioxide. Texas is by far the No.1 state in the nation for CO₂ emissions, and the blame is placed on high-carbon coal. Texas emits more CO₂ than the next two biggest CO₂ polluters combined, California and Pennsylvania, which together have twice Texas' population.

"Texas has no business building any more pulverized coal plants when we already lead the nation in CO₂ and mercury emissions," says Dallas Mayor Laura Miller, Chair of the TCACC. "It's unimaginable that TXU is proposing to build a new plant that is far dirtier than many plants that were built decades ago. Even worse, Oak Grove is a lignite plant, which is the dirtiest coal in the world and what Oak Grove will burn for the next 50 years. "

The federal government does not yet require states to regulate carbon dioxide emissions, and the Environmental Protection Agency (EPA) had ruled that carbon dioxide is not an air pollutant and is not regulated under the Clean Air Act. But in April, the United States Supreme Court required the EPA to reconsider its ruling.

That is one reason that the TCACC is asking the TCEQ to remand the Oak Grove case back to the SOAH judges. The judges ruled against the plant last summer, citing that the Applicant "had failed to prove by a preponderance of the evidence that its BACT [Best Available Control Technology] proposals for controlling NO_x [nitrogen oxide] and mercury emissions [were] technically practicable and would achieve the performance standards contained in the application and draft permit." The ALJs also found that the Applicant "failed to prove...that its proposed source would not cause or contribute to a condition of air pollution."

Other reasons to remand the case that are cited in the motion include:

- A State District Judge ruled in February 2007 that Gov. Perry's Executive Order to fast-track the 11 TXU coal plants, including Oak Grove, was unconstitutional.
- In preparations for contesting 8 of the 11 coal plant permits, the TCACC conducted the most comprehensive air modeling ever conducted in Texas. The modeling was not available for the Oak Grove case, although Oak Grove's emissions were included in the modeling and show significant impact to the City of Austin and surrounding counties.
- The United Nations has issued significant reports, twice, emphasizing that human activity that emits carbon dioxide (CO₂) is the cause of global warming. The reports have been approved by over 200 countries and 2000 scientists.

Despite the ALJs recommendation for denial, TXU and its proposed buyers, KKR and TPG, want to proceed with Oak Grove. This can only be done if the TCEQ approves the Oak Grove permit application.

The TCEQ is expected to take up the Oak Grove permit case at its June 13th meeting. Mayor Miller and TCACC attorney, Terry Oxford of Susman Godfrey, will attend the TCEQ meeting in Austin and hope to be able to address the Commission.

BACKGROUND:

The TCACC, formed by Dallas Mayor Laura Miller with the help of Houston Mayor Bill White, was formed to give local cities, counties and governmental entities a voice and a seat at the table during the state permitting process of currently proposed coal-fired plants in Texas. TCACC is made up of 36 members representing more than 7 million Texans. The TCACC was formed in August of 2006 and did not exist when the Oak Grove permit application began the state process and went before the SOAH judges.

For more information, interviews, or copies of the *Motion to Remand* contact:

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