

Carolyn Kresek Lis
15634 Brookwood Drive
Frisco, TX 75035

(972) 678-2085
lisfamily@tx.rr.com

September 19, 2009

VIA ELECTRONIC FILING

Chief Clerk
Office of Chief Clerk
ATTN: Agenda Docket Clerk, Mail Code 105, TCEQ
P.O. Box 13087
Austin, Texas 78711

RE: Docket No. 2009-0848-AIR, TCEQ Air Quality Permit No. 8597

As a requestor for a contested hearing in the above matter, this letter serves as my formal reply to responses.

This is my first opportunity to make a comment for the record since I sent my original request for a contested hearing to you in November 2007 -- almost **two** years ago. I've been disappointed by this process and it has led me to the conclusion that the TCEQ air permitting process is systemically broken. This particular permit renewal highlights what is wrong with the system. The TCEQ air permitting process 1) penalizes public participation; 2) is so complex your Office of Public Assistance misinforms the public; 3) is bias; and 4) misses opportunities to improve Texas air quality.

Penalizes Public Participation.

TCEQ quantifies an applicant's compliance history using a complex formula to determine a compliance score. A lower score indicates a better compliance history. An applicant with no NOV's (notice of violations) or investigations is given a default score of 3.01. Now here is the problem, if the public lodges a complaint against a company and an investigation results with no NOV issued, the facility's compliance score **improves**. In our particular case, APAC's compliance score improved each time a citizen lodged an odor complaint that TCEQ investigated if TCEQ did not issue a NOV. **Receiving more complaints can improve a facility's compliance history.** This is particularly problematic with odor complaints. By the time the TCEQ investigator arrives on scene, hours later or perhaps the next day, the plant may no longer be batching asphalt. **Despite over 60 odor complaints and several NOV's, this asphalt plant had a better compliance score than a facility with no complaints or NOV's.**

Permitting Process is too Complex.

I requested information from the TCEQ Office of Public Assistance (OPA) on the permit renewal process. They promptly responded to me with the email dated 20 December 2008

(enclosure). I was informed that the permit renewal would involve a 15 day public comment period. I was also told a request for a contested hearing during that 15 day comment period would trigger a second 15 day comment period. And I was informed that a request made by our congressional representative would trigger a public meeting. Representative Paxton, Senator Shapiro, the City of Frisco and Collin County all requested a public meeting. There were two contested hearing requests received and over 600 public comments. Four months later I found out there would **not** be a second 15 day comment period **or** a public meeting - a different set of rules applied to this air permit renewal. I don't blame OPA. I blame a convoluted and confusing permitting process. **If OPA can't get it right how do you expect the public to understand and participate?**

TCEQ Air Permitting is Bias Against Public Input

TCEQ routinely uses data supplied by a permitted facility. In our case, the Executive Director used modeling data from the applicant to assess human health effects from the facility. APAC supplied data was also used to clear the stack opacity NOV mentioned in the Executive Director's Response to Public Comments – Response 12. The subsequent stack opacity readings were conducted by APAC employees trained at Uncle Buck Whitlow's Smoke School in Louisiana (enclosure). Information supplied by two APAC employees was accepted by TCEQ to clear a serious violation that would otherwise have triggered more stringent permit requirements.

Yet TCEQ's acceptance of outside data apparently does not extend beyond that supplied by permit holders. The City of Frisco air quality study found several chemicals of concern above health effect screening levels but TCEQ would not consider the study. Per the Executive Director's Response to Public Comments "Because the TCEQ was not involved in this process, the TCEQ is unable to verify the results of the risk assessment study done by Wittliff and Associates for the City of Frisco."

I'm not sure if TCEQ was involved in training the APAC employees at Uncle Buck's Smoke School, but that did not stop them from using that data.

And finally, it would appear TCEQ would prefer to use modeled data supplied by the permit applicant rather than actual air samples collected for a study commissioned by a Texas Municipality to assess human health effects.

Missed Opportunity for Texans

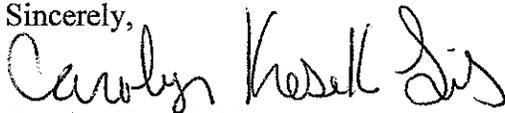
The pollution abatement technology in place when a permit is granted, remains in effect for the entire life of that permit – be it 10, 20, 30 or 40 years. As long as the facility does not increase or dramatically modify its operation, it **never** has to change its pollution abatement equipment/practice (see Executive Director's Response to Comments, Response 5). Permits are renewed every ten years. I don't think it unreasonable to ask Texas businesses to every ten years update their pollution abatement equipment. What is even scarier is that old pollution abatement

equipment is unlikely to perform as efficiently as when it was first installed. Texans can't expect cleaner air if this is not changed. To use an analogy, I can't expect to keep my house cool during a Texas summer using a 30 year old air conditioner. **We can't expect cleaner air if facilities are not required to periodically (once every ten years) update their pollution controls.**

In Conclusion

I'm hopeful that issues with this specific permit renewal will be resolved during mediation. I am appreciative of the many outstanding employees in TCEQ. While I may not have always agreed with their conclusions, I have the utmost respect for the integrity and professionalism of the TCEQ Dallas/Fort Worth Regional Air Section. I can't say the same for the TCEQ Air Permit Division. Over the past three years, I dismissed as too cynical all the reports about TCEQ being business centric at the expense of air quality. Unfortunately, this permitting experience has radicalized me. I don't trust TCEQ. I no longer believe TCEQ is protective of air quality for Texans. I believe our State's system for air permitting is fundamental broken and badly in need of reform. The final straw for me was in the Executive Director's decision to not even review the air quality study conducted by the City of Frisco. That action (or inaction) was so flagrant that I'm shocked. The irony here is that the study director for the City of Frisco study was a former TCEQ Air Permits employee.

Sincerely,



Carolyn Kressek Lis

Enclosure:

Email correspondence between TCEQ Office of Public Assistance and Carolyn Kressek Lis
Correspondence from APAC dtd September 26, 2005 on Investigation #432859

MAILING LIST
APAC-TEXAS, INC.

Mr. Stephen Koonce
APAC-Texas Inc.
PO Box 224048
Dallas, TX 75222-4048

Mr. Doug Brown
TCEQ, MC-173
PO Box 13087
Austin, TX 78711-3087

The Honorable Jerry Hoagland
& Joe Jaynes
210 S McDonald St Ste 626
McKinney, TX 75069-7602

The Honorable Keith Self
210 S McDonald St, Ste 626
McKinney, TX 75069-7602

Mr. Michael Gould
TCEQ, MC-163
PO Box 13087
Austin, TX 78711-3087

Mr. Blas Coy, Jr.
TCEQ, OPIC, MC-103
PO Box 13087
Austin, TX 78711-3087

Mr. Kyle Lucas
TCEQ, MC-222
PO Box 13087
Austin, TX 78711-3087

The Honorable Jack Hatchell
& Stacey Kemp
210 S McDonald St Ste 626
McKinney, TX 75069-7602

The Honorable Florence Shapiro
Texas Senate
PO Box 12068, RM 1E.3
Austin, TX 78711-2068

Mr. Beecher Cameron
TCEQ, MC-163
PO Box 13087
Austin, TX 78711-3087

Ms. Bridget Bohac
TCEQ, OPA, MC-108
PO Box 13087
Austin, TX 78711-3087

The Honorable Phyllis Cole
210 S McDonald St, Ste 626
McKinney, TX 75069-7602

The Honorable Ken Paxton
TX House of Representatives
PO Box 2910
Austin, TX 78768-2910

Kerry Russell
Russell & Rodriguez LLP
1633 Williams Dr, Bldg 2 Ste 200
Georgetown, TX 78628-3659

Regional Administrator
US EPA, Region 6
1445 Ross Ave, Ste 1200
Dallas, TX 75202-2733



Date: Thursday, December 20, 2007 12:31 PM
 From: WWW - OPA <OPA@tceq.state.tx.us>
 To: lisfamily@tx.rr.com
 Subject: Re: APAC Permit Renewal 8597

Dear Ms. Kresek-Lis,

The renewal application for APAC-Texas Inc, was determined to be administratively complete, meaning all the correct documents were submitted, on 11/28/07. Notice of Receipt and Intent to Obtain an Air Quality Permit (NORI) was mailed to the APAC with newspaper publication instructions on 11/28/07. This notice was also mailed to the required mailing list. At this time we have not received the affidavit of publication from APAC therefore I can not tell you where and when the notice was published. The NORI has a comment period of 15 days. If no requests for a contested case were received within that 15 days then there would no other notice. You and Kerry Russell both submitted a request for a contested case hearing. Your request was received by the TCEQ Chief Clerk on 12/3/07 and Mr. Russell s on 12/5/07. Even though we don t know for sure when the NORI was published by counting forward we can state that both of your requests were timely filed. Therefore the applicant will be required to publish further notice which allows for further public participation.

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The application is now under technical review by TCEQ staff. Typically the technical review takes approximately 4-6 months. The comment period remains open throughout the technical review. At the conclusion of the technical review if staff finds that the application meets all the requirements of the rules and is protective of human health and the environment then a second notice, Notice of Application and Preliminary Decision (NAPD), will be published in the newspaper and mailed to everyone on the required mailing list and all those who have submitted comments. The NAPD comes with the final 30 day comment period which starts from the date it is published in the paper.

We have received requests to hold a public meeting from Senator Shapiro and Representative Paxton. At this time the public meeting has not been set. Typically the meeting is set once the technical review is near complete or is complete so that staff is better able to answer questions. Once the meeting is set notice will be mailed to everyone on the on the required mailing list and all those who have submitted comments. If the meeting is held after the NAPD outside of the final 30 day comment period the comment period is automatically extended to the close of the public meeting.

The purpose of the public meeting is to give the public an opportunity to ask questions of the TCEQ staff and the applicant. You will also have the opportunity to submit formal comments either in writing or orally for the record.

At the end of the final comment period which is triggered by the publishing of the NAPD or the conclusion of the public meeting whichever is last, all comments submitted throughout the entire comment period including the public meeting are gathered up and responded to by staff and compiled into the document called the Response to Comments (RTC). The RTC will come with the staff s final recommendation on the permit application. Their decision after reviewing and responding to comments could be either to not issue the permit, issue the permit with changes or issue the permit with no changes. If the recommendation is to go forward with the permit, the RTC will come with instructions for those who disagree with this decision to either request a contested case hearing or a request for reconsideration. A request for contested case hearing or reconsideration must be received

30 days from the date of the RTC.

At the conclusion of this 30 days any hearing requests received will be set for the Commissioner's agenda for their consideration. At the agenda the Commissioner's will consider all hearing requests and make a decision to either grant or deny the requests. If any or all of the hearing requests or granted, the matter will be referred over to the State Office of Administrative Hearings (SOAH). At the conclusion of the hearing the SOAH judge will write a Proposal for Decision (PFD). The PFD is brought back before the Commissioner's for their final decision on the permit. The SOAH judge can require parties to the hearing to pay for transcripts costs. You may choose to withdraw your hearing request or participate in the contested hearing, if one is held, at any time.

With regard to your question about volume of comment letters, at any given time the agency is processing thousands of various permit applications. Of those thousand there are probably a few hundred that generate public interest and comments being filed. A pending application can have as little as one comment filed or hundreds such as APAC. Keep in the mind that the quantity of comments filed does not have an impact on the application review but the quality of the comment.

Here is a link to the Public Participation in Permitting brochure that might be helpful understanding this process.

http://www.tceq.state.tx.us/comm_exec/opa/pub_part.html

Please let us know if you have any further questions.

Sincerely,

The Office of Public Assistance
800-687-4040

>>> <lisfamily@tx.rr.com> 12/18/2007 12:59 PM >>>

My name is Carolyn Kresek-Lis. I've sent in a request for a contested hearing on APAC Permit Renewal 8597. I wanted to confirm what to expect in the future and to ask a few questions about procedures and timing.

I understand each person submitting comments or requesting hearings/meetings will receive a letter from TCEQ acknowledging receipt of their letters. And that all the comments/questions will be compiled and addressed by TCEQ in one single document that will likewise be sent to all who have submitted comments. Is this correct?

I also understand a public meeting will be held on this permit renewal. Will we receive the written response addressing our questions/concerns before the public meeting?

The Texas State Department of Health Services is reviewing the City of Frisco Ambient Air Quality study for TCEQ. Much of the concern over this permit renewal centers around potential health effects on young children in the neighborhood and at the local elementary school. It would make the most sense to hold any public meeting AFTER Department of Health Services has had an opportunity to conduct its review.

Will the technical review of the permit be completed before or after the public meeting?

Will the public meeting be conducted before or after the second comment period?

Does my request for a contested hearing go before the commissioners after the technical review is complete? I'm perfectly happy to withdraw my request IF the environmental controls mentioned in my request, namely: elimination of reclaimed oil as a fuel source; installation of a fabric filter system; and installation of a dust suppression barrier are part of the permit renewal requirements.

I was told by a member of your office that if my request for a contested hearing goes all the way to an actual hearing, and if I "lose," I could be forced to pay APAC's legal fees. Is this correct?

<http://webmail.tx.rr.com/do/mail/message/preview?msgId=FCAQCDELIM1134&l=en-US...> 9/19/2009

The first public comment period is still open, as APAC has not yet published the public notice of its permit renewal. This is a whole month after I received my Notice of Receipt of Application and Intent. Is this unusual?

Finally, I am part of a small, informal citizen's coalition (20 people). We've been pleasantly surprised by the number of comments received on this permit renewal. Out of curiosity, is this the norm or this an unusually high number of comments?

Thank you for your help and assistance.

Carolyn Kresek-Lis
lisfamily@tx.rr.com

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TCEQ

Region 4 - DFW



Attachment 1

Correspondence from APAC

APAC-Texas Incorporated

RN101330868

CN600317473

September 26, 2005

Investigation #432859

Kirk D. Morris
Area Manager

A subsidiary of Ashland Paving And Construction, Inc.
Texas Bitulithic Division
P.O. Box 224048, Dallas, TX 75222-4048
Tel: 214 741-3531, Fax: 214 742-3540

August 11, 2005

Ms Xin Rao
TCEQ – Region 4
2309 Gravel Dr.
Fort Worth, TX 76118

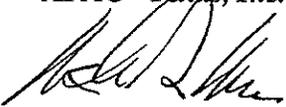
RE: NOV for Frisco, TX Asphalt Plant

Ms. Rao,

Per the prescribed method and direction of TCEQ, APAC – Texas, Inc. hereby submits results of tests and certification of testers in order to demonstrate our compliance with our air permit issued to our Frisco, TX asphalt plant. Please review and notify us at your convenience as to our compliance with the directives of NOV conditions and existing air permit.

Sincerely,

APAC – Texas, Inc.



Kirk D. Morris
Area Manager

Attachments

Cc: S. Robertson, APAC
M. Smith, APAC

RECEIVED

AUG 15 2005

DFW REGION-4



Whitlow Enterprises, LLC
www.smokeschool.net

Certifies that

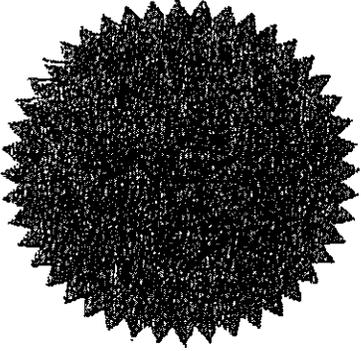
Mike Rodriguez of APAC-Texas Inc.

Has met all of the requirements of EPA Reference Method 9 and 22
And is qualified as a Visible Emissions Observer

Date: June 3, 2005

This certificate is valid for 6 months after the above date

George Artie "Butch" Whitlow



Certificate Number 1668



Whitlow Enterprises, LLC

www.smokeschool.net

Certifies that

Ernest Cantu of APAC-Texas Inc.

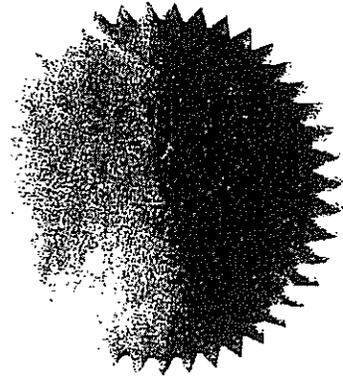
Has met all of the requirements of EPA Reference Method 9 and 22

And is qualified as a Visible Emissions Observer

Date: June 3, 2005

This certificate is valid for 6 months after the above date

George Artie "Butch" Whitlow



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DFW REGION-4

Certificate Number 1665

VISIBLE EMISSION OBSERVATION FORM

COMPANY NAME: **APAC-TI**

LOCATION: **14900 SH 121**

CITY: **Frisco TX** STATE: **TX** ZIP: **75034**

PROCESS EQUIPMENT: **CMI Plant** OPERATING MODE: **230 TPH**

CONTROL EQUIPMENT: **Wet Scrubber** OPERATING MODE: **100%**

DESCRIBE EMISSION POINT: **round smoke stack**

HEIGHT OF EMISSION POINT: **50 ft** HEIGHT OF EMISSION POINT RELATIVE TO OBSERVER: **START 75 ft END Same**

DISTANCE TO EMISSION POINT: **START 100 ft END Same** DIRECTION TO EMISSION PT. (DEGREES 0-360): **START 90° W END Same**

VERTICAL ANGLE TO OBSERVATION POINT: **START 90° END Same** DIRECTION TO OBSERVATION POINT (DEGREES 0-360): **START 270° END Same**

DISTANCE & DIRECTION TO OBSERVATION POINT FROM EMISSION POINT: **START 140 ft NW END Same**

DESCRIBE EMISSIONS: **START Slowing w/Steam END Same**

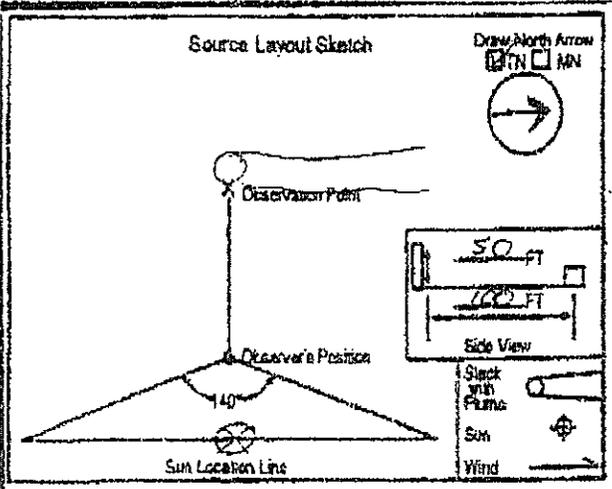
EMISSION COLOR: **START White END Same** WATER DROPLET PLUME: ATTACHED DETACHED NONE

DESCRIBE PLUME BACKGROUND: **START Partly cloudy END Same**

BACKGROUND COLOR: **START Blue END Same** SKY CONDITIONS: **START P. cloudy END Same**

WIND SPEED: **START 5 mph END Same** WIND DIRECTION: **START North END Same**

AMBIENT TEMP: **START 85° END Same** WET BULB TEMP: _____ RH percent: _____



ADDITIONAL INFORMATION

| OBSERVATION DATE | | START TIME | | END TIME | COMMENTS |
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| 3 | 0 | 0 | 0 | 0 | Avg Opacity 0% |
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OBSERVER'S NAME (PRINT): **Ernest Carlin Jr**

OBSERVER'S SIGNATURE: *[Signature]* DATE: **8-3-05**

ORGANIZATION: _____

CERTIFIED BY: **Whitlow** DATE: **8-3-05**

Whitlow Enterprises
 www.smokeschool.net
 205 W. Walnut St
 Washington IN 47501
 Phone 812-254-3503 FAX 812-254-5046

COMPANY NAME APAC-TX Inc

LOCATION 14900 SH 121

CITY Frisco STATE TX ZIP 75034

PROCESS EQUIPMENT CM I Plant OPERATING MODE 240TPH

CONTROL EQUIPMENT Wet Scrubber OPERATING MODE 100%

DESCRIBE EMISSION POINT round smoke stack

HEIGHT OF EMISSION POINT 50' ft HEIGHT OF EMISSION POINT RELATIVE TO OBSERVER START 75' ft END Same

DISTANCE TO EMISSION POINT START 100' ft END Same DIRECTION TO EMISSION PT. (DEGREES 0-360)) START 90° W END Same

VERTICAL ANGLE TO OBSERVATION POINT START 90° END Same DIRECTION TO OBSERVATION POINT (DEGREES 0-360)) START 270° END Same

DISTANCE & DIRECTION TO OBSERVATION POINT FROM EMISSION POINT START 140 ft NW END Same

DESCRIBE EMISSIONS START looping w/ steam END Same

EMISSION COLOR START White END same WATER DROPLET PLUME ATTACHED DETACHED NONE

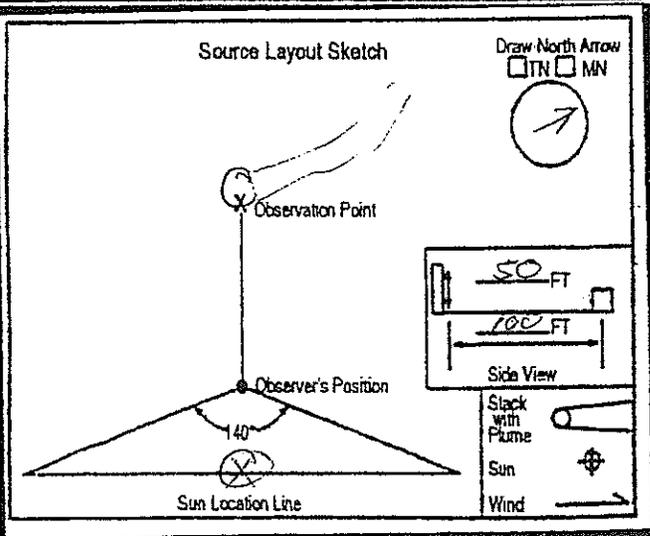
DESCRIBE PLUME BACKGROUND START Partly cloudy END same SKY CONDITIONS START Partly cloudy END same

WIND SPEED START Blue END Same WIND DIRECTION START Northwest END Same

AMBIENT TEMP. START 5 mph END Same WET BULB TEMP RH percent START 8.3 END same

OBSERVATION DATE 8-4-05 START TIME 9:40 Am END TIME 9:46 Am

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OBSERVER'S NAME (PRINT) Ernest Cantor

OBSERVER'S SIGNATURE [Signature] DATE 8-4-05

ORGANIZATION

CERTIFIED BY Whitlow DATE 6-3-05

Whitlow Enterprises
 www.smokeschool.net
 205 W. Walnut St.
 Washington IN 47501
 Phone 812-254-3503 FAX 812-254-5046

RECEIVED
 8-4-05
 2:15 PM

COMPANY NAME: APAC-TX

LOCATION: 14900 SH 121

LOCATION: Trisco TX ZIP: 75034

PROCESS EQUIPMENT: CMI Plant OPERATING MODE: 230 TPH

CONTROL EQUIPMENT: Wet Scrubber OPERATING MODE: 100%

DESCRIBE EMISSION POINT: round smoke stack

HEIGHT OF EMISSION POINT: 50 ft

HEIGHT OF EMISSION POINT RELATIVE TO OBSERVER: START 75 ft END Same

DISTANCE TO EMISSION POINT: START 100 ft END Same

DIRECTION TO EMISSION PT. (DEGREES 0-360): START 90° W END Same

VERTICAL ANGLE TO OBSERVATION POINT: START 90° END Same

DIRECTION TO OBSERVATION POINT (DEGREES 0-360): START 270° END Same

DISTANCE & DIRECTION TO OBSERVATION POINT FROM EMISSION POINT: START 140 ft NW END Same

DESCRIBE EMISSIONS: START Lapping w/steam END Same

EMISSION COLOR: START White END Same

WATER DROPLET PLUME: ATTACHED DETACHED NONE

DESCRIBE PLUME BACKGROUND: START Partly cloudy END Same

BACKGROUND COLOR: RT Blue END Same

SKY CONDITIONS: START P. cloudy END Same

WIND SPEED: START 5 mph END Same

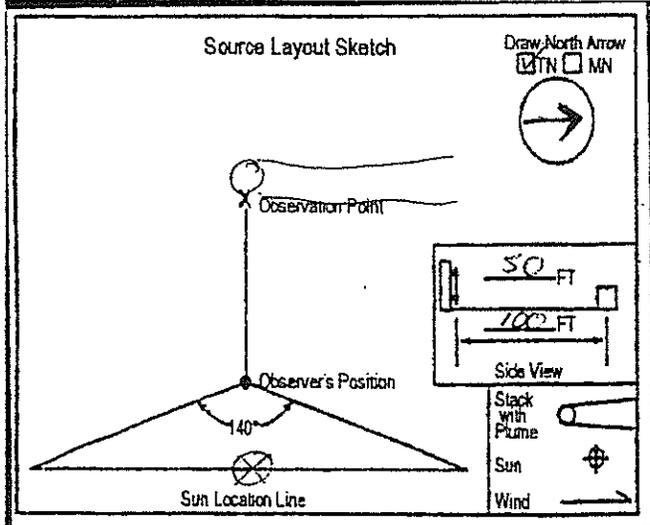
WIND DIRECTION: START North END Same

AMBIENT TEMP: START 85° END Same

WET BULB TEMP: RH percent

OBSERVATION DATE: 8-3-05 START TIME: 5:00 AM END TIME: 9:56 AM

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MIN | 0 | 15 | 30 | 45 | COMMENTS |
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ADDITIONAL INFORMATION

OBSERVER'S NAME (PRINT): Ernest Carlin Jr

OBSERVER'S SIGNATURE: [Signature]

DATE: 8-3-05

ORGANIZATION:

CERTIFIED BY: Whitlow DATE: 8-3-05

RECEIVED

NOV 11 2005

DFW F 38014

Whitlow Enterprises
www.smokeschool.net
205 W. Walnut St.
Washington IN 47501
Phone 812-254-3503 FAX 812-254-5046