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&  
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ROBERT E. "ROBIN" MORSE, III  
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ATTORNEYS AND COUNSELORS  
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FIVE HOUSTON CENTER  
1401 MCKINNEY STREET  
HOUSTON, TEXAS 77010-4035

EMAIL: RMORSE@CRAINCATON.COM

August 27, 2008

Via Federal Express

Ms. LaDonna Castañuela  
Attn: Agenda Docket Clerk  
Texas Commission on Environmental Quality  
Office of Chief Clerk MC-105  
12100 Park 35 Circle, Bldg. F  
Austin, Texas 78753

RE: Application by Aspen Power, L.L.C., for proposed Air Quality Permit Numbers:  
81706, PSD-TX 1089, HAP 12; TCEQ Docket No. 2008-1145-AIR; TCEQ  
Docket No. 2008-1145-AIR

Dear Ms. Castañuela:

Enclosed is the original affidavit of George Harris (along with 11 copies) that should replace the copy filed with your office yesterday with Aspen Power, L.L.C.'s Response to Motions to Overturn the Decision of the Executive Director of the Texas Commission on Environmental Quality.

Thank you for your attention to this matter.

Sincerely,

CRAIN, CATON & JAMES, P.C.

By:

  
Robert E. "Robin" Morse, III

REM/nm  
Enclosure

cc: Mr. Blas Coy  
Texas Commission on Environmental Quality  
Office of Public Interest, MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087

CHIEF CLERKS OFFICE  
2008 AUG 29 PM 3:45  
TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

August 27, 2008

Page 2

cc: Ms. Bridget Bohac  
Texas Commission on Environmental Quality  
Office of Public Assistance MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087

Ms. Amy Browning  
Texas Commission on Environmental Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087

Mr. Richard Hughes, P.E.  
Texas Commission on Environmental Quality  
Office of Permitting, Remediation, and Registration  
Air Permits Division (MC-163)  
P.O. Box 13087  
Austin, Texas 78711-3087

Aaron and Willie Jean Hartsfield  
2219 Jimmie St.  
Lufkin, Texas 75904-1127

Dallas Pierre  
106 McMullen St  
Lufkin, Texas 75904-1405

STATE OF TEXAS           §  
  §  
COUNTY OF ANGELINA   §

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2008 AUG 29 PM 3:40  
CHIEF CLERKS OFFICE

**AFFIDAVIT**

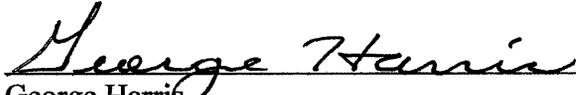
BEFORE ME on this day personally appeared George Harris, known to me to be a credible person of lawful age, who, upon oath, deposed and stated the following:

“My name is George Harris, and I reside at 803 Glenn in Lufkin, Texas 75904. I am over 21 years of age, and I have personal knowledge of the facts stated herein.

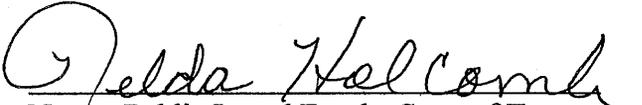
I know Mr. Aaron Hartsfield who lives on Jimmie Street in Lufkin, Texas 75904. I have spoken to Mr. Hartsfield concerning the proposed Aspen Power electric plant and his withdrawal of his original opposition to that plant and the proposed permit from the Texas Commission on Environmental Quality. Mr. Hartsfield recognized to me that he had signed a letter withdrawing his opposition to that facility, stated that he preferred that people did not know he had signed such a letter, but inquired as to whether his daughter could get a job at the plant once it is built and operating. When I had the foregoing conversation with Mr. Hartsfield, he did not indicate to me in any way that his signature on any letter related to the Aspen Power plant had been forged.

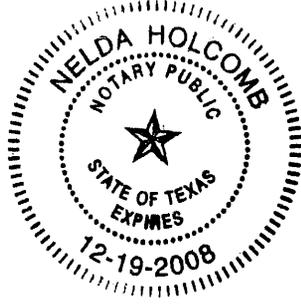
I am not employed directly or indirectly in a consulting capacity by Aspen Power, LLC, nor have I been paid any money to make this affidavit. Nor is anyone in my family employed directly or indirectly in a consulting capacity by Aspen Power, LLC.

Further affiant sayeth not.”

  
George Harris

SWORN TO AND SUBSCRIBED BEFORE ME on this the 25<sup>th</sup> day of August 2008, to which witness my hand and seal of office.

  
Notary Public In and For the State of Texas



CRAIN  
CATON  
&  
JAMES

TELEPHONE: 713.658.2323  
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EMAIL: RMORSE@CRAINCATON.COM

August 25, 2008

Via Hand-Delivery:

Ms. LaDonna Castañuela  
Attn: Agenda Docket Clerk  
Texas Commission on Environmental Quality  
Office of Chief Clerk MC-105  
12100 Park 35 Circle, Bldg. F  
Austin, Texas 78753

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2008 AUG 26 PM 3: 21  
CHIEF CLERKS OFFICE

RE: Application by Aspen Power, L.L.C., for proposed Air Quality Permit Numbers:  
81706, PSD-TX 1089, HAP 12; TCEQ Docket No. 2008-1145-AIR; TCEQ  
Docket No. 2008-1145-AIR

Dear Ms. Castañuela:

Enclosed please find an original and 11 copies of Aspen Power, L.L.C.'s Response to  
Motions to Overturn the Decision of the Executive Director of the Texas Commission on  
Environmental Quality.

Thank you for your attention to this matter.

Sincerely,

CRAIN, CATON & JAMES, P.C.

By:

  
Robert E. "Robin" Morse, III

REM/nm  
Enclosure

cc: Mr. Blas Coy  
Texas Commission on Environmental Quality  
Office of Public Interest, MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087  
Fax: (512) 239-6377

August 25, 2008

Page 2

cc: Ms. Bridget Bohac  
Texas Commission on Environmental Quality  
Office of Public Assistance MC-108  
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Ms. Amy Browning  
Texas Commission on Environmental Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Fax: (512) 239-0606

Mr. Richard Hughes, P.E.  
Texas Commission on Environmental Quality  
Office of Permitting, Remediation, and Registration  
Air Permits Division (MC-163)  
P.O. Box 13087  
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Aaron and Willie Jean Hartsfield  
2219 Jimmie St.  
Lufkin, Texas 75904-1127

Dallas Pierre  
106 McMullen St  
Lufkin, Texas 75904-1405

TCEQ DOCKET NO. 2008-1145-AIR  
TCEQ AIR QUALITY PERMIT NO. 81706  
PREVENTION OF SIGNIFICANT DETERIORATION (PSD)  
AIR QUALITY PERMIT NO. PSD-TX-1089  
HAZARDOUS AIR POLLUTANT MAJOR SOURCE [FCAA § 112(g)]  
DETERMINATION NO. HAP12

2008 AUG 26 PM 3: 21

CHIEF CLERKS OFFICE

APPLICATION OF	§	BEFORE THE
ASPEN POWER, L.L.C. for	§	TEXAS COMMISSION ON
LUFKIN GENERATING PLANT	§	ENVIRONMENTAL QUALITY
LUFKIN, ANGELINA COUNTY		

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**ASPEN POWER, L.L.C.'S RESPONSE TO MOTIONS TO  
OVERTURN THE DECISION OF THE EXECUTIVE DIRECTOR OF  
THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND ALL PERSONS ON THE ATTACHED SERVICE LIST:

COMES NOW Aspen Power, L.L.C. ("Aspen") and files this Response to Motions to Overturn the Decision of the Executive Director of the Texas Commission on Environmental Quality.

The Texas Commission on Environmental Quality's ("TCEQ") Office of the Chief Clerk received two Motions to Overturn ("MTO") the Decision of the Executive Director of the TCEQ. Dallas Pierre and Aaron and Willie Jean Hartsfield filed the MTOs. This response addresses the issues raised by the two MTO letters.

**Dallas Pierre**

**Issue:**

Mr. Dallas Pierre's letter to the TCEQ, and attached July 22, 2008 letter to the Community Core Group of North Lufkin, stated that his hearing request withdrawal was obtained under false pretenses, was not certified or notarized and that he did not consult or have his attorney present when he signed the hearing request withdrawal. Mr. Pierre noted he was against any industrial complex near his neighborhood. Mr. Pierre also stated that wind, natural gas and solar energy, not biomass, are the prudent sources of clean energy for the future.

**Response:**

Neither Texas statutes nor TCEQ rules require a hearing request withdrawal letter to be notarized, certified, signed after attorney request or consultation, or while an attorney is present. Additionally, other than being asked to sign the letter by a "friend", Mr. Pierre does not demonstrate or explain how he signed the hearing request withdrawal letter under false pretenses.

The location of the plant was raised during the public comment period and addressed in Response No. 10 in the Executive Director's Response to Comments. If a facility permit application demonstrates that all applicable statutes, rules and regulations have been met, the TCEQ does not have jurisdiction to approve or deny the permit based solely on its location. In any event, it should be noted that the location of the proposed Aspen Power facility is actually zoned for industrial land use by the City of Lufkin.

Additionally, if all appropriate statutes, rules and regulations have been met, it is outside TCEQ's jurisdiction to decide what kind of plant Aspen should be building. Aspen applied for a biomass plant, and TCEQ reviewed the application to ensure the facility complied with all statutes, rules and regulations.

### **Aaron and Willie Jean Hartsfield**

#### **Issue 1:**

Aaron and Willie Jean Hartsfield stated that Aaron Hartsfield's hearing request withdrawal letter was fraudulent, and that Aaron Hartsfield did not sign the letter. Additionally, they stated Aaron Hartsfield had not even seen the letter until he received notice from the TCEQ.

#### **Response:**

Mr. Hartsfield claims that his signature was forged on his hearing request withdrawal letter. However, this claim is simply not credible. Not only does his signature to the July 17, 2008 withdrawal letter (signed on behalf of both his wife, Willie Jean Hartsfield, and himself) appear to be consistent with his original protest letter from July 2007, but Mr. Hartsfield has admitted to at least one unrelated third party that he signed the withdrawal letter, preferred that others in the neighborhood not know that he signed the letter, but stated that he wanted his daughter to be employed at the new plant. (See attached affidavit of Mr. George Harris.) Mr. Hartsfield's motives are not clear at this point, but suffice it to say that he should not be allowed to reverse his withdrawal after both the Commission and the applicant have relied on his withdrawal in going forward with the permitting of the proposed facility as well as business commitments towards its construction and operation. Moreover, as stated below, he has raised no new substantive issues which merit reversal of the permitting decision.

#### **Issue 2:**

Aaron and Willie Jean Hartsfield are concerned that the Environmental Protection Agency ("EPA") has not had enough time to review the air dispersion modeling, and that the site is 75-90 feet below the adjacent neighborhood.

#### **Response:**

At the request of TCEQ, Aspen resubmitted the Air Dispersion Modeling Report to the Environmental Protection Agency on April 19, 2008. On April 21, 2008 Aspen received email confirmation that EPA had received the Air Dispersion Modeling Report. On May 8, 2008 our consultants contacted EPA for additional comments. EPA advised our consultants that if they

had any further comment they would promptly notify the TCEQ. As of this date, 127 days have passed since EPA acknowledged receiving the Air Dispersion Modeling Report. EPA has provided no additional comments, and it is our understanding that EPA normally comments within 30 days. EPA has had ample time to review the Air Dispersion Modeling Report, and will normally only comment if they disapprove of the information.

The issue regarding plant elevation was discussed in detail in the Air Dispersion Modeling Report. The plant site was surveyed and USGS map elevations were adjusted to take into account site-specific changes to the site topography due to past excavation activities. Additionally, TCEQ's Air Dispersion Modeling staff audited the Air Dispersion Modeling Report, and after some initial deficiencies were corrected and the corrected modeling submitted to the TCEQ, the staff found no deficiencies in the modeling protocol or modeled impact results.

**Issue 3:**

Aaron and Willie Jean Hartsfield are concerned that Aspen is allowed to emit CO<sub>2</sub> values greater than other plants, which have proven to emit lower CO<sub>2</sub> emissions, and that the TCEQ has expanded on this issue by allowing Aspen to utilize an improper Best Available Control Technology ("BACT"). Also, Aaron and Willie Jean Hartsfield want Aspen forced to use a PM Continuous Emission Monitoring System.

**Response:**

At this point, carbon dioxide (CO<sub>2</sub>) emissions are not the subject of regulatory controls and demonstrations.

CO<sub>2</sub> emissions are not reviewed for BACT compliance. However, the issue of BACT compliance was addressed and answered in Response Nos. 1-4 and 6 of the Executive Director's Response to Comments. This issue does not provide any additional information that would warrant granting the MTO.

The issue regarding the PM Continuous Emission Monitoring System was raised during the public comment period and addressed in Response No. 5 of the Executive Director's Response to Comments. This issue does not provide any additional information that would warrant granting the MTO.

**Issue 4:**

Aaron and Willie Jean Hartsfield state that TCEQ has allowed Aspen to use an electrostatic precipitator instead of a fabric filter baghouse and that the electrostatic precipitator allows for higher levels than a filter bag.

**Response:**

This issue was raised in the public comment period and addressed in Response No. 4 of the Executive Director's Response to Comments. This issue does not provide any additional information that would warrant granting the MTO.

Respectfully submitted,

CRAIN, CATON & JAMES, P.C.

By:

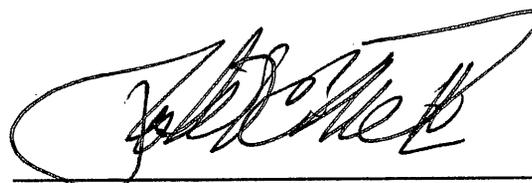


Robert E. "Robin" Morse, III  
State Bar No. 14552500  
1401 McKinney, Suite 1700  
Houston, Texas 77010  
Telephone: (713) 658-2323  
Facsimile: (713) 658-1921  
E-mail: [rmorse@craincaton.com](mailto:rmorse@craincaton.com)

ATTORNEY FOR ASPEN POWER, LLC

**CERTIFICATE OF SERVICE**

I certify that on August 26, 2008, a true and correct copy of "Aspen Power, L.L.C.'s Response to Motions to Overturn the Executive Director of the Texas Commission on Environmental Quality" in the Application of Aspen Power, L.L.C., for Permit Nos. 81706, PSD-TX 1089, and HAP 12 was forwarded via first-class mail and/or facsimile to all parties on the attached mailing list.



Robert E. "Robin" Morse, II

CHIEF CLERKS OFFICE

2008 AUG 26 PM 3: 21

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**MAILING LIST  
ASPEN POWER, L.L.C.  
DOCKET NO. 2008-1145-AIR  
PERMIT NOS. 81706, PSD-TX 1089, HAP 12**

Mr. Blas Coy  
Texas Commission on Environmental Quality  
Office of Public Interest, MC-103  
P.O. Box 13087  
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STATE OF TEXAS           §  
  §  
COUNTY OF ANGELINA   §

**AFFIDAVIT**

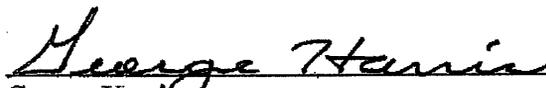
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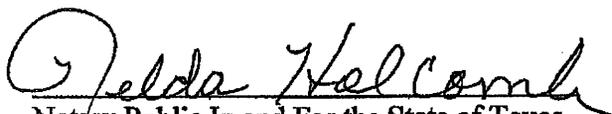
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I am not employed directly or indirectly in a consulting capacity by Aspen Power, LLC, nor have I been paid any money to make this affidavit. Nor is anyone in my family employed directly or indirectly in a consulting capacity by Aspen Power, LLC.

Further affiant sayeth not.”

  
George Harris

SWORN TO AND SUBSCRIBED BEFORE ME on this the 25<sup>th</sup> day of August 2008, to which witness my hand and seal of office.

  
Notary Public In and For the State of Texas

