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Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 26, 2008

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

2008 AUG 26 PM 4:15
CHIEF CLERKS OFFICE
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: Aspen Power LLC, Application for Air Permit No. 81706, PSD-TX-1089, HAP12,
Executive Director's Response to Motions to Overturn

Dear Ms. Castañuela:

Enclosed for filing is an original plus eleven copies of the Executive Director's Response to Motions to Overturn in the above entitled matter.

If you have any questions, please do not hesitate to call me at extension 0891.

Sincerely,

A handwritten signature in cursive script that reads "Amy L. Browning".

Amy L. Browning
Staff Attorney
Environmental Law Division

Enclosure

Cc: Attached mailing list.

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TCEQ Docket No. 2008-1145-AIR

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**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 4: 15

CHIEF CLERKS OFFICE

APPLICATION BY	§	BEFORE THE
	§	
Aspen Power LLC	§	TEXAS COMMISSION ON
Lufkin Generating Plant	§	
Lufkin, Angelina County	§	ENVIRONMENTAL

EXECUTIVE DIRECTOR'S RESPONSE TO MOTIONS TO OVERTURN

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this response (Response) to the motions to overturn (MTOs) submitted by persons listed herein.

I. Introduction

The permit application for Aspen Power's Air Quality Permit No. 81706 was received on April 23, 2007, and declared administratively complete on May 23, 2007. The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was published on June 20, 2007 in *La Lengua*, and on June 22, 2007 in *The Lufkin Daily News*. The Notice of Application and Preliminary Decision for an Air Quality Permit (second public notice) for this permit application was published on March 13, 2008 in *The Lufkin Daily News*, and on March 19, 2008 in *La Lengua*. The ED's Response to Comment (RTC) was filed on July 18, 2008.

On July 18, 2007 the Chief Clerk's Office received a comment letter and hearing request from Mr. AJ Hunt. Attached to this letter were several comment letters, including letters from Dr. Dallas Pierre and Aaron and Willie Jean Hartsfield. These letters were designated as public hearing requests. Many of these comment letters were subsequently withdrawn, including a withdrawal of the hearing request by Mr. Hunt received on June 9, 2008. On July 9, 2008 Aspen Power requested that the permit be direct referred to SOAH, as there were still the two letters from Dr. Pierre and the Hartsfields that were being considered by the TCEQ as hearing requests. TCEQ then received two letters, dated July 16 and 17 from Dr. Pierre, withdrawing his comments and request for a hearing. The TCEQ also received a letter dated July 17, 2008 withdrawing the hearing request and comments of the Hartsfields. On July 17, 2008 Aspen Power made a motion to SOAH to remand the permit back to the ED, given that all hearing requests had been withdrawn. The motion was granted on July 22, 2008. The permit was then approved by the ED and mailed on July 25, 2008.

Subsequent to mailing out the permit, the commission received two MTO letters. The letters were sent by Mr. Aaron Hartsfield and Mrs. Willie Jean Hartsfield, and Dr. Dallas Pierre. Mr. and Mrs. Hartsfield's letter was received by the Chief Clerk's office on August 11, 2008, while Dr. Pierre's letter was received on August 6, 2008.

II. ED's Answers to Concerns Raised in the MTO letters

A. Issues Related to Authenticity and Veracity

Both MTOs raise various issues of authenticity and veracity regarding letters submitted to the TCEQ on their behalf. The ED lacks any knowledge regarding these allegations, and therefore is not in a position to offer any comments or response to these issues.

B. Modeling

The Hartsfields' MTO letter also asserts problems with the permit that was issued to Aspen Power. Specifically, the letter states that the air dispersion modeling performed by the applicant raises concerns about the elevation of the plant in relation to surrounding neighborhoods, and states that the EPA was unable to give an informed opinion regarding this issue, as they had not received a copy of the air dispersion modeling. This concern was originally raised in comment letters received by TCEQ regarding the permit, and addressed in the ED's Response to Comments (RTC), Response No. 8. The EPA was sent a copy of the air dispersion modeling that was performed for the permit, and TCEQ did not receive any further comments from EPA on the modeling.

C. CO₂ Emissions

Furthermore, the Hartsfields' letter states that TCEQ is negligent in allowing Aspen to emit CO₂ levels greater than other plants. TCEQ does not evaluate CO₂ emissions for proposed air authorizations. On July 5, 2000, the agency received a petition for rulemaking from the law firm of Henry, Lowerre and Frederick on behalf of Public Citizen's Texas Office, Clean Water Action, Lone Star Sierra Club, Sustainable Energy and Economic Development Coalition, and Texas Campaign for the Environment. The petition requested the TCEQ create new air rules to encourage reductions in greenhouse gases, promote the efficient use of energy, offer training in methods to reduce carbon dioxide and methane, and develop a climate change action plan. On August 23, 2000, the Commission responded to the petitions by issuing a commission decision (Docket No. 2000-0845-RUL). The Commission declined to regulate CO₂ as a greenhouse gas. To this extent, the TCEQ has not collected any data related to CO₂ emissions. The ED generally offers no opinion on matters that are not regulated by the TCEQ.

D. BACT

The Hartsfields also express concern that the permit will not require Aspen to utilize BACT, since the permit does not require Continuous Emission Monitoring Systems

(CEMS) for particulate matter (PM). This question was originally raised by EPA, and addressed in the ED's RTC, Response No. 5. Because this boiler does not burn fossil fuels, it is not subject to the New Source Performance Standards (NSPS) for electric utility boilers, 40 CFR 60 Subpart Da, but rather the NSPS for industrial-commercial-institutional boilers, Subpart Db. The NSPS do not require a PM CEMS. 40 CFR § 60.46b(d) and (j) allow the owner or operator of a facility the choice of either Reference Method testing or a PM CEMS for initial compliance determination, and 40 CFR § 60.48b(a) and (j) allow the choice of either a COMS or a PM CEMS for continuous determination of compliance. Aspen has chosen to use Reference Method testing and a COMS. However, PM/PM₁₀ will be directly monitored periodically because Special Condition No. 28 of the permit requires annual stack testing.

E. Other Controls

Finally, the letter expresses a concern about Aspen's use of an electrostatic precipitator (ESP), instead of a fabric baghouse filter. This was also originally a question raised by EPA and addressed in the ED's RTC, Response No. 4. As discussed above, the TCEQ examined the RBLC for 18 biomass boilers with PM/PM₁₀ limits which were issued permits from 2003 until the present and also took into account a recent Texas air permit PSD-TX-1061. Of these, one unit proposes to use both an electrostatic precipitator (ESP) and a fabric filter baghouse. However, although it has a low limit it has not been built and, since it has an unusual configuration, TCEQ does not consider it typical BACT for stoking grate biomass boilers. Four of the units use a fabric filter and seven units use an ESP, as will Aspen. The other six units use other controls, which perform poorly compared to ESPs and fabric filters. The permit limits of these units indicate that a fabric filter is not superior to an ESP in capturing PM/PM₁₀ on biomass boilers, but that the two methods are equivalent for this application. The PM/PM₁₀ limits on the units with just a fabric filter range from 0.023 lb/MMBtu to 0.025 lb/MMBtu (which is the permit limitation for Aspen). The limits on units with ESPs range from 0.020 lb/MMBtu to 0.032 lb/MMBtu. This data indicates that the performance for the two methods overlaps. Since the ESP's have, in general, the same range of permit limits as the fabric filters, the exact limit is apparently a matter of the specific application, rather than of the control device. Aspen has consulted with its supplier and determined that 0.025 lb/MMBtu is the appropriate limit for BACT.

III. Conclusions

Based on the above response, and the information contained in the ED's RTC, the Executive Director respectfully recommends that the commission deny the Motions to Overturn.

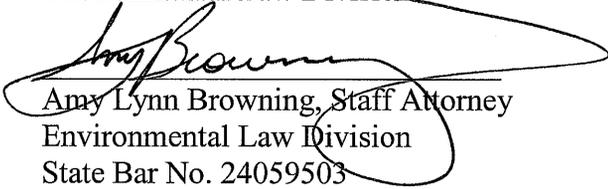
Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

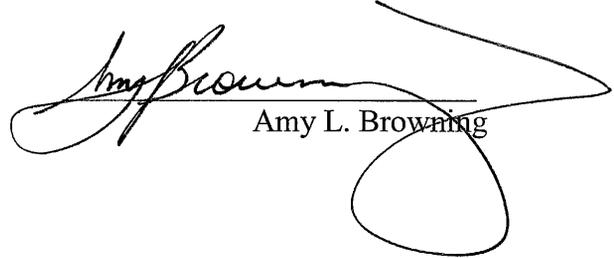
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

On the 26th day of August, 2008, a true and correct copy of the foregoing instrument was served on all persons on the attached mailing list by the undersigned via deposit into the U.S. Mail, inter-agency mail, facsimile, or hand delivery.



Amy L. Browning

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
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