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March 22, 2012

Hand Delivery and Electronic Filing

Ms. Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle
Austin, TX 78753

RE: TCEQ Docket No. 2009-0283-AIR
SOAH Docket No. 582-09-3008
Application of White Stallion Energy Center, LLC for Air Quality Permit Nos. 86088, HAP28, PAL26, and PSD-TX-1160

Dear Ms. Bohac:

Enclosed please find an original and seven copies of Environmental Defense Fund, Inc.'s Objections and Brief with Accompanying Remand Evidence.

Sincerely,

Thomas M. Weber
Attorney for Environmental Defense Fund, Inc.

TMW/jam
Enclosures

cc (w/encl): Mr. Les Trobman (via hand delivery)
All parties (via Certified Mail and Email)

SOAH DOCKET NO. 582-09-3008
TCEQ DOCKET NO. 2009-0283-AIR

APPLICATION OF WHITE STALLION ENERGY CENTER, LLC FOR STATE AIR QUALITY PERMIT NOS. 86088; HAP28, PAL26, AND PSD-TX-1160 HEARINGS	**§ § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

ENVIRONMENTAL DEFENSE FUND'S OBJECTIONS AND BRIEF WITH ACCOMPANYING REMAND EVIDENCE

TO THE HONORABLE COMMISSIONERS AND GENERAL COUNSEL TROBMAN:

COMES NOW Environmental Defense Fund, Inc. ("EDF") and files this Objections and Brief with Accompanying Remand Evidence, and would respectfully show the following:

I. OBJECTIONS.

The District Court's Remand Order requires that additional evidence be taken on: (1) the October 25th Site Plan submitted by White Stallion to the U.S. Army Corps of Engineers ("the Corps"); and (2) on that site plan's "***impacts*** on WSEC's TCEQ air permit application under applicable law."[1] The TCEQ's Office of General Counsel has required that the parties submit briefs and accompanying evidence **without** allowing for the opportunity for discovery, cross-examination, or an evidentiary hearing.[2] EDF objects to this procedure as it violates Texas Health & Safety Code § 382.0291(d) and EDF's due process rights and impermissibly shifts the burden of proof to EDF.

A. Remand Procedure Violates Texas Health & Safety Code § 382.0291(d).

The public (including EDF) is entitled to notice and an opportunity for a full evidentiary hearing on the plant White Stallion ***actually intends to build***. Given the extent of the changes made to the Air Permit Site Plan, the Commission should require White Stallion to resubmit its

[1] *See* EDF's Brief on Remand, Attachment 2 to that Brief, Remand Order (emphasis added).
[2] *See* General Counsel Trobman's 02/23/12 Letter, Attachment 1.

application and issue new notice to the public pursuant to the plain language of Texas Health & Safety Code § 382.0291(d). Proceeding otherwise renders the language in Section 382.0291(d) meaningless. Therefore, EDF objects on the basis that the remand procedure required by TCEQ violates Texas Health & Safety Code § 382.0291(d).

B. TCEQ's Remand Procedure Shifts the Burden of Proof to EDF In Violation of TCEQ's Own Rules and EDF's Due Process Rights.

Subject to and without waiving its objection regarding § 382.0291(d), EDF objects to TCEQ's remand procedure because it impermissibly shifts the burden of proof to EDF. This is an air permitting case. As the applicant, White Stallion has the burden of proof because it is the party charged under federal and state law with demonstrating compliance with applicable air quality standards.[3] At this point, White Stallion has never demonstrated that the off-property emissions impacts associated with the October 25th Site Plan meet applicable air quality standards. By requiring EDF to submit evidence before White Stallion makes the demonstrations required by law, TCEQ violates its own rules, including rules incorporating federal law, and commits error as matter of law. Further, TCEQ's burden shifting is arbitrary and capricious and violates EDF's due process rights.

C. EDF Is Entitled to a Full Evidentiary Hearing on Remand with Discovery and Cross Examination.

Subject to and without waiving its objection under § 382.0291(d), EDF objects to TCEQ's remand procedure because it denies EDF the opportunity for a full evidentiary hearing, including cross examination and discovery, and thereby violates EDF's due process rights. Texas law requires that parties be afforded a full and fair hearing on disputed fact issues.

[3] 30 TAC § 116.111 provides that the application must include information which demonstrates that emissions from the facility will comply with all applicable requirements in this chapter concerning PSD review. Thus, in its application, an applicant must show (among other things) that its proposed source will comply with the demonstrations required under 40 CFR § 52.21(k) (entitled "Source Impact Analysis" and incorporated in TCEQ's PSD regulations at 30 TAC § 116.160(c)(2)(A)).

Geeslin v. State Farm Lloyds, 255 S.W.3d 786, 802-804 (Tex.App. – Austin 2008). A full and fair hearing necessarily includes the right to conduct discovery and cross-examination. *Id.* On March 2nd, EDF filed requests for commissions and subpoenas with the TCEQ's Chief Clerk because White Stallion would not voluntarily cooperate with discovery and because TCEQ provided EDF with less than 30 days to conduct discovery. (*See* Attachment 2). TCEQ has not issued the requested commissions and subpoenas. Absent discovery, EDF cannot develop a full evidentiary record on the "impacts" associated with White Stallion's latest site plan. Therefore, the procedure imposed by TCEQ and TCEQ's failure to issue EDF's requested commissions and subpoenas violates EDF's due process rights by denying EDF an opportunity to conduct discovery and cross-examination and by failing to afford EDF a full and fair hearing on disputed fact issues.

Based on the foregoing, TCEQ should require White Stallion to resubmit its application and issue new notice to the public pursuant to the plain language of Texas Health & Safety Code § 382.0291(d). At the very least, the Commission should remand this matter to the State Office of Administrative Hearings ("SOAH") for a full evidentiary hearing, including discovery, and for the taking of additional evidence on the issues identified by the District Court in the Remand Order.

Subject to these objections and without waiving legal arguments or points of error previously raised, EDF responds to TCEQ's request for briefs with accompanying evidence as follows:

II. BRIEF ON REMAND.

White Stallion is playing a shell game with its ever-changing site plans and has made a mockery of TCEQ's air permitting process. On October 19, 2010, TCEQ issued White Stallion a

Final Order for an air permit based on a specific site plan that White Stallion's CEO Frank Rotondi testified was ***the*** site plan White Stallion "fully and completely" intended to build ("the Air Permit Site Plan"). *See* Exhibit B, p. 12 and Exhibit C, p. 77 to Attachment 3. The Final Order hinges, in large part, on air dispersion modeling performed by White Stallion to demonstrate compliance with federal and state air quality requirements. That modeling was based on the Air Permit Site Plan. Despite the CEO Rotondi's sworn testimony, White Stallion subsequently prepared and ultimately filed a new and ***different*** site plan for the very same power plant with the U.S. Army Corps of Engineers ("the Corps") in support of a wetlands dredge-and-fill permit application. That is, White Stallion has now represented to the federal government, subject to criminal penalty, that it intends to build an entirely different plant. This new site plan is dated a mere ***six days*** after TCEQ issued its Final Order (the "October 25th Site Plan" or "Site Plan 4") and ***moves 73 out of 84 emissions points*** used by White Stallion in its air dispersion modeling. The Corps has now issued White Stallion a wetlands permit based on this new site plan. Therefore, White Stallion must now demonstrate that its current site plan—the October 25th Site Plan—complies with applicable air quality laws.

A. An Amendment "Would Be Necessary."

Texas Health & Safety Code § 382.0291(d) provides that an applicant "may not amend the application after the 31st day before the date on which a public hearing on the application is scheduled to begin." If an amendment "would be necessary," the applicant must "resubmit the application" to TCEQ and restart the public notice clock.

Moving 73 out of 84 emissions points by itself clearly requires that White Stallion perform new modeling and resubmit its application pursuant to § 382.0291(d). That change, moreover, requires discovery and an evidentiary hearing on whether White Stallion deliberately

sought to circumvent § 382.0291(d). Plans for multi-billion dollar power plants are not changed on a whim. The October 25th Site Plan, dated six days after TCEQ signed its Final Order, must have taken weeks if not months of detailed engineering work to complete. The timing of these changes in the face of Mr. Rotondi's sworn testimony that White Stallion was "fully and completely" prepared to build the Air Permit Site Plan "in every respect" raises substantial questions about whether White Stallion intentionally sought to circumvent § 382.0291(d) and/or whether White Stallion knew of its plans to change the site plan but said nothing while TCEQ considered and ultimately issued the Final Order. *See* Exhibit B, p. 12 and Exhibit C, p. 77 to Attachment 3.

White Stallion's submission and sworn certification of the October 25th Site Plan to the Corps has to mean something. The plain language of § 382.0291(d) has to mean something. Taken together they mean that White Stallion intends to build a plant fundamentally different than the one described in it air permit application and that an amendment to the air permit application "would be necessary."

To be clear, the Remand Order makes no mention of § 382.0291(d) but nor does the Remand Order preclude compliance with it. The Remand Order orders remand for the taking of additional evidence on the new site plan's impacts on WSEC's TCEQ air permit application "under applicable law" – a term which encompasses § 382.0291(d). The Remand Order aside, § 382.0291(d) speaks for itself. Amendment is both warranted by the facts and required by the plain language of the statute and other laws providing for the public's right to notice of, an opportunity to comment on, and an opportunity to contest, the plant White Stallion actually intends to build. 42 U.S.C. § 7475; Tex. Health & Safety Code § 382.056; Tex. Gov't Code § 2001.051. To date, TCEQ has denied the public and EDF these rights.

B. No Evidence on "Impacts" Associated with the October 25th Site Plan in the Administrative Record.

Setting aside the requirement of resubmission and new notice under Section 382.0291(d), White Stallion has never demonstrated that the October 25th Site Plan complies with applicable air quality standards, a requirement under federal and state law. This is not surprising given that White Stallion developed the October 25th Site Plan while TCEQ deliberated on an outdated site plan that was no longer relevant. Air quality permit applicants like White Stallion are required to demonstrate that the emissions impacts associated with the plant they actually intend to build comply with applicable National Ambient Air Quality Standards ("NAAQS") and Prevention of Significant Deterioration ("PSD") standards. *See* 40 CFR § 52.21(k) (entitled "Source ***Impact*** Analysis")(emphasis added). An "impacts" analysis necessarily requires new air dispersion modeling, discovery, and a full hearing. Without new modeling, White Stallion cannot demonstrate that the October 25th Site Plan complies with "applicable law" including 40 CFR § 52.21(k) – the EPA rule which lies at the very heart of air quality regulation and which is incorporated in TCEQ's own rules.[4] As it stands now, the only "evidence" presented by either party demonstrates that White Stallion has not made the required demonstration for the plant it

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[4] EPA's rules at 40 CFR § 52.21(k) provide as follows:

> (k) Source impact analysis. The owner or operator of [a proposed new major source of air pollutants] *shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:*
>
> (1) Any national ambient air quality standard in any air quality control region; or
>
> (2) Any applicable maximum increase over the baseline concentration in any area.

40 CFR § 52.21(k) (emphasis added). See also Clean Air Act §165(a)(3) (42 USC § 7475 (a)(3)) (providing that an operator of a new major source of air pollutants must "demonstrate" the facility will not "cause or contribute" to air pollution in violation of national ambient air quality standards or maximum allowable increases in air pollution). 40 CFR § 52.21(k) is arguably **the** single most important standard with which air quality permit applicants must comply and is the foundation of air quality regulation in the United States. It is incorporated at 30 TAC § 116.160(c)(2)(B).

now plans to build. *See* Exhibit D to Attachment 3, EDF's Motion for Remand and Exhibit A to Attachment 4, EDF's Reply in Support of Motion to Remand.

C. <u>EDF's Motion for Remand</u>.

On March 4, 2011, EDF filed a Motion for Remand with the District Court in Travis County (*See* Attachment 3). Attached to EDF's Motion were four (4) exhibits, which served as the basis for EDF's motion to take additional evidence. The essential facts supporting EDF's motion are: (1) less than a week after the Final Order was signed by TCEQ in the underlying air permit proceeding, and very likely well before the Final Order was signed, White Stallion made wholesale changes to the site plan for its proposed power plant; (2) these changes relocated 73 out of 84 pieces of equipment, coal/petroleum coke piles, and other sources of pollutant emissions; (3) White Stallion failed to inform the TCEQ or the other parties that it had made the changes; and (4) White Stallion then represented to the Corps, under sworn certification, that it intended to build the plant according to the changed site plan. Since that time, the Corps has issued to White Stallion a wetlands permit based on the changed site plan (i.e. the October 25th Site Plan).

In addition to those facts, EDF presented affidavit testimony from Dr. Roberto Gasparini, Ph. D., EDF's expert dispersion modeler, that establishes the materiality of the changes to the site plan. *See* Exhibit D[5] to Attachment 3, EDF's Motion for Remand and Exhibit A to Attachment 4, EDF's Reply in Support of Motion to Remand. Specifically, Dr. Gasparini testified that new modeling is required in order to determine whether emissions from White Stallion's October 25th Site Plan comply with federal and state air quality standards:

> 5. One of the 73 emission sources that moved is the Railcar Unloading Building (EPN DCRAILUL or Entry Number 20 on Exhibit D-3 to my

[5] The revised exhibit D is included as Attachment 5.

> prior affidavit). This emission source represents the third largest emitter of particulate matter at the proposed White Stallion power plant (the main stacks represent the first and second largest emitters) and it was moved approximately 788 meters from the middle of the property to a location very close to the property line. Since emission impacts are determined at off-property locations, **the movement of an emission source closer to a property line will likely increase its off-property emission impacts**. Another of the 73 emission sources that moved is Conveyor 3 (EPN CONV3 or Entry Number 38 on Exhibit D-3 to my prior affidavit). This emission source is a conveyor used for transporting materials. By moving the Railcar Unloading Building farther from the material storage piles, the length of this conveyor must be increased. Emission rates from conveyors are based in part on conveyor length and the equations used to calculate emission rates for conveyors are found in TCEQ guidance. See Attachment 1. For every additional 300 feet of conveyor length (approximately 91 meters), the emission rate is increased. The emission rate from this conveyor will increase. **An increase in emission rate will affect the emission impact caused by this source.**
>
> 6. In my opinion, the movement of emission sources closer to the property line and the lengthening of the conveyors are material changes and warrant re-modeling the potential emissions impacts associated with the proposed plant. **Without modeling the emissions from the sources as they would be located on White Stallion's new site plan, it is not possible to determine whether the net effect would be a violation of one or more of the federal or state clean air standards**.

See Exhibit A to Attachment 4, EDF's Reply in Support of Motion to Remand (emphasis added). Dr. Gasparini's sworn testimony questioning White Stallion's ability to qualify for an air permit based on its October 25th Site Plan has gone completely unchallenged by either White Stallion or the Executive Director. Neither the Executive Director nor White Stallion has controverted any *facts* relied on by Dr. Gasparini, nor any opinions expressed by Dr. Gasparini. Neither the Executive Director nor White Stallion filed any affidavit or other evidence of their own controverting Dr. Gasparini's opinions at any time in this proceeding.

D. Without New Modeling, White Stallion's Application and Air Permit and the Final Order are Deficient.

As Dr. Gasparini explains above, the numerous changes to material handling facilities may affect whether the proposed power plant can comply with specified maximum concentration

of particulate matter in the near vicinity of the plant. This is because material handling facilities have a shorter emission release height than smoke stacks and, as a result, may have proportionately greater effects on levels of particulate matter in the air closer to the proposed plant (whereas the much taller stacks tend to have greater impacts farther away from the plant). *See* Exhibit A, ¶4 to Attachment 4. The volumes of materials that White Stallion proposes to handle on a yearly basis are massive. For instance, White Stallion's permit authorizes the receipt and handling of up to 5,000,000 tons per year of coal, 5,000,000 tons of petroleum coke, 2,000,000 tons of limestone, along with 1,500,000 tons of fly ash and 800,000 tons of bed ash, which are waste materials left over after burning the millions of tons of fuel. *See* Exhibit A, ¶3 to Attachment 4. The fugitive emissions from the material handling activities as currently proposed in the October 25th Site Plan must be analyzed.

Comparing White Stallion's October 25th Site Plan to the Air Permit Site Plan upon which TCEQ's Final Order and White Stallion's air permit are based, it is clear that dozens of emissions points associated with material-handling have moved, with the third largest source of fugitive particulate matter emissions (Railcar Unloading Building or EPN DCRAILUL) being moved from the middle of the property to a location very close to the property line. *See* Exhibit A, ¶5 to Attachment 4. Since emission impacts are determined at off-property locations, the movement of a large emission source closer to a property line will likely increase its off-property emission impacts. *Id.* Another source moved by White Stallion is Conveyor 3 (EPN CONV3). This emission source is a conveyor used for transporting materials. The length of this conveyor must be increased because of the movement of the Railcar Unloading Building to a point located several hundred feet farther from the material storage piles. *Id.* Lengthening a conveyor increases the emission rate from that conveyor because emission rates from conveyors are based

in part on conveyor length. *Id.* Since the length of Conveyor 3 was increased, its emission rate necessarily increases, which, in turn, necessarily constitutes an amendment requiring resubmission of the application under Section 382.0291(d).

Again the uncontroverted affidavit testimony from Dr. Gasparini is that these changes matter and warrant re-modeling the potential emissions impacts associated with the proposed plant. Neither the Executive Director nor White Stallion submitted any evidence demonstrating otherwise. Therefore, EDF respectfully requests that the TCEQ admit into the record the Exhibits and revised Exhibits attached to EDF's Motion for Remand and Reply. Specifically, EDF moves for admission of the following:

- Exhibits A, B, C, and D to Attachment 3.
- Revised Exhibit D to Attachment 5.
- Exhibits A, B, C, and D to Attachment 4.

Based on this uncontroverted evidence, White Stallion has failed to meet its burden of proof under federal and state law. White Stallion has not demonstrated that the October 25th Site Plan complies with applicable air quality standards.[6]

III. REMAND EVIDENCE ON "IMPACTS."

The District Court did not order TCEQ to summarily admit the attachments to EDF's Motion for Remand, which the Court already had before it. Rather, the District Court ordered remand "for the taking of additional evidence on the October 25, 2010 site plan submitted by WSEC to the U.S. Army Corps of Engineers ("Site Plan 4") ***and on its impacts*** on WSEC's TCEQ air permit application." (emphasis added). Pursuant to the District Court's order to take

[6] 30 TAC § 116.111; 30 TAC § 116.160.

additional evidence and subject to EDF's objections to TCEQ's proposed procedure, EDF moves for admission of the following:

- Written Direct Testimony of Dr. Roberto Gasparini, Ph.D with exhibits, Attachment 6.

EDF respectfully requests that TCEQ admit this additional evidence on the impacts October 25th Site Plan has on White Stallion's air permit application. This evidence demonstrates that the changed site plan does impact White Stallion's ability to comply with federal and state law. In particular, the additional evidence on impacts demonstrates that White Stallion's proposed plant will result in emissions of PM_{10} that greatly exceed the 24-hour PSD increment for PM_{10} and emissions of SO_2 that greatly exceed the 1-hour NAAQS for SO_2. *See* Exhibit 200, 206 and 207 to Attachment 6.

A. Changing the Site Plan Results in Multiple Violations of the PSD Increment Standard for PM_{10}.

White Stallion's changes to the site plan result in predicted exceedances of the 24-hour PSD increment for PM_{10} at multiple locations around the proposed plant. TCEQ's rules and federal law require that a proposed source demonstrate that their allowable emissions will not "cause or contribute" to a violation of any applicable maximum allowable increase over the baseline concentration in any area.[7] This is commonly referred to as the "PSD Increment." The 24-hour PSD Increment for PM_{10} is 30 $\mu g/m^3$. The dispersion modeling performed by EDF based on the October 25th Site Plan predicts 24-hour concentrations of PM_{10} that exceed 30 $\mu g/m^3$, and in some cases impacts exceed 45 $\mu g/m^3$. Therefore, TCEQ cannot issue a permit to White Stallion because it has not complied with all applicable PSD requirements.[8] It is important to note that EDF's expert dispersion modeler made no changes to White Stallion's

[7] 30 TAC § 116.160(c)(2) incorporating 40 CFR § 52.21(k).
[8] 30 TAC § 116.111(a)(2)(I).

underlying modeling except changing the location of the emissions points per the October 25th Site Plan and making corresponding adjustments to building locations, sizes and orientations. *See* Exhibit 200 to Attachment 6. EDF's expert dispersion modeler did not adjust the emission rates from the conveyors to reflect the overall increase in conveyor length associated with the October 25th Site Plan, which means that the impacts are likely greater than modeled. *See* Exhibit 200 to Attachment 6.

B. Gasparini's Modeling Demonstrates Violations of the 1-Hour NAAQS for SO_2.

In addition to the PSD Increment, 40 CFR § 52.21(k) requires proposed sources to demonstrate that their allowable emissions will not cause or contribute to a violation of "any national ambient air quality standard in any air quality control region." (emphasis added).[9] TCEQ's rules likewise provide that the "commission may not issue a permit to any new major stationary source or major modification located in an area designated as attainment or unclassifiable, for any National Ambient Air Quality Standard (NAAQS) under FCAA, § 107, if ambient air impacts from the proposed source would cause or contribute to a violation of any NAAQS."[10] Even more telling is that TCEQ's rules provide that the "National Primary and Secondary Ambient Air Quality Standards as promulgated pursuant to section 109 of the Federal Clean Air Act, ***as amended, will be enforced throughout all parts of Texas***."[11]

TCEQ's rules require demonstrations of compliance with ***any*** NAAQS.[12] TCEQ can either enforce the new NAAQS or decide not to process air permit applications pending adoption of rules implementing the new NAAQS. It cannot issue permits ignoring the new NAAQS which its own rules require it to enforce "as amended . . . throughout all of Texas." Additionally,

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[9] Incorporated by TCEQ at 30 TAC § 116.160(c)(2).
[10] 30 TAC § 116.161.
[11] 30 TAC § 101.21 (emphasis added).
[12] 30 TAC § 116.161; 30 TAC § 116.160 (incorporating by reference 40 CFR § 52.21(k)).

EPA has made clear that new NAAQS must be implemented *upon their effective dates.*[13] Indeed, in this very case, EPA expressly notified TCEQ that a demonstration of compliance with the new NO_2 and SO_2 NAAQS was required.[14] EPA promulgated a new SO_2 NAAQS because it determined that the existing 24-hour and annual SO_2 NAAQS were not adequate to protect public health with an adequate margin of safety.[15]

White Stallion has not made this required demonstration. The remand evidence attached to this brief illustrates that White Stallion cannot make the required demonstration. EDF's dispersion modeling predicts that emissions from White Stallion's proposed plant (both under the October 25th Site Plan AND the Air Permit Site Plan upon which the Final Order and Permit are based) will result in multiple exceedances of the 1-hour NAAQS for SO_2. Based on this evidence, TCEQ cannot issue a permit to White Stallion because it has not complied with all the applicable legal requirements including, most importantly, 40 CFR § 52.21(k).[16]

IV. CONCLUSION AND REQUEST FOR RELIEF.

The evidence attached herein proves that White Stallion is not entitled to a permit. At the very least White Stallion's ever-changing site plans deserve additional scrutiny. If White Stallion is entitled to a new permit, it must prove it and to date, it has not done so.

Without waiving its objections or its request for resubmission under § 382.0291(d), EDF requests that TCEQ find that White Stallion failed to meet its burden of proof by failing to demonstrate compliance with the NAAQS and PSD increments based on EDF's remand evidence. Alternatively, EDF respectfully requests that TCEQ require the Applicant to comply with § 382.0291(d) and resubmit its application and issue new notice. Absent that, and without

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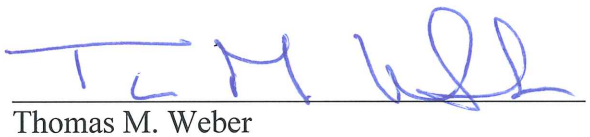
[13] 75 FR. 35520, 35580.
[14] Appendix A to EDF's Motion for Rehearing.
[15] 75 F.R. 35520, 35529-35536.
[16] 30 TAC § 116.111(a)(2)(I).

waiving its objections or its request for resubmission under § 382.0291(d), EDF respectfully requests that TCEQ remand to SOAH for discovery and a full and fair hearing on the issues raised in the Remand Order.

Respectfully submitted,



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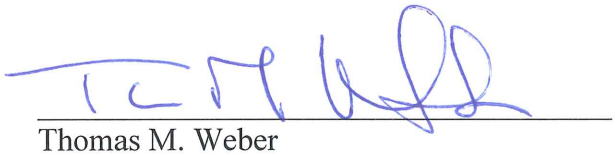
Attorneys for Environmental Defense Fund, Inc.

CERTIFICATE OF SERVICE

I certify that on March 22, 2012, a true and correct copy of the foregoing has been sent to the representatives of parties on the official service list by email and certified mail, return receipt requested.



Thomas M. Weber

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TCEQ Docket No. 2009-0283-AIR
SOAH Docket No. 582-09-3008

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Attachment 1

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

February 23, 2012

To: Persons on the attached mailing list (by mail and facsimile as indicated)

Re: Travis County District Court Order on Motion to Remand, issued June 20, 2011, in the matter of Environmental Defense Fund, Inc. vs. TCEQ; Cause No. D-1-GN-11-000011, concerning the application by White Stallion Energy Center, L.L.C.; TCEQ Docket No. 2009-0283-AIR; SOAH Docket No. 582-09-3008.

This letter serves to set the deadlines for the submission of briefs with accompanying evidence, responses, and replies, as authorized by the Court's June 20, 2011 Order in the above-referenced matter and in accordance with the Commission's direction at its February 22, 2012 agenda.

Briefs with accompanying evidence, as authorized by the Court's June 20, 2011 order, must be filed with the Office of the Chief Clerk no later than **5:00 p.m. on Thursday, March 22, 2012.** White Stallion Energy Center, L.L.C., the Executive Director, and the Office of Public Interest Counsel are encouraged to respond to the briefs and accompanying evidence no later than **5:00 pm.** on **Thursday, April 12, 2012.** Any replies will be due by **5:00 p.m. on Thursday, April 26, 2012**. Briefs, responses, and replies must be filed with the Chief Clerk of the TCEQ electronically at http://www10.tceq.state.tx.us/epic/efilings/ or by filing an original and seven copies at: Office of the Chief Clerk, ATTN: Agenda Docket Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711 [Fax (512) 239-3311].

Notification will be provided by separate letter when this matter is set for the Commission's agenda. If you have any questions about this matter, please contact me at (512) 239-5525.

Very truly yours,

Les Trobman
General Counsel

Mailing List

Mailing List
White Stallion Energy Center, L.L.C.
TCEQ Docket No. 2009-0283-AIR
SOAH Docket No. 582-09-3008

Nancy Olinger, Assistant Attorney General
Cynthia Woelk, Assistant Attorney General
Office of the Attorney General
Environmental Protection Section
P.O. Box 12548, Capitol Station (MC-018)
Austin, Texas 78711-2548
512/463-2012 FAX 512/320-0052

Gabriel Clark Leach
Ilan Levin
Environmental Integrity Project
1303 San Antonio St. Suite 200
Austin, Texas 78701
512/637-9477 FAX 512/584-8019

Eric Groten
Patrick W. Lee
Vinson & Elkins
2801 Via Fortuna, Suite 100
Austin, Texas 78746-7568
512/542-8400 FAX 512/542-8612

Thomas Weber
Paul Tough
Greg S. Friend
McElroy, Sullivan & Miller
P.O. Box 12127
Austin, Texas 78711
512/327-8111 FAX 512/327-6566

Kerrie Jo Qualtrough
Paul D. Keeper
Administrative Law Judge
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025
512/475-4993 FAX 512/475-4994

Stephanie Bergeron Perdue
Booker Harrison
TCEQ Legal Division MC 218
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0600 FAX 512/239-0606

Scott Humphrey
TCEQ Office of Public Interest Counsel MC 103
P.O. Box 13087
Austin, Texas 78711-3087
512/239-6363 FAX 512/239-6377

Docket Clerk
TCEQ Office of Chief Clerk MC 105
P.O. Box 13087
Austin, Texas 78711-3087
512/239-3300 FAX 512/239-3311

Attachment 2

McElroy, Sullivan & Miller, L.L.P.
Attorneys at Law

MAILING ADDRESS
P.O. BOX 12127
AUSTIN, TX 78711

1201 SPYGLASS DRIVE
SUITE 200
AUSTIN, TX 78746

TELEPHONE
(512) 327-8111

FAX
(512) 327-6566

March 2, 2012

Hand Delivery

Ms. Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle
Austin, TX 78753

RE: TCEQ Docket No. 2009-0283-AIR
SOAH Docket No. 582-09-3008
Application of White Stallion Energy Center, LLC for Air Quality Permit Nos. 86088, HAP28, PAL26, and PSD-TX-1160

Dear Ms. Bohac:

Enclosed please find requests for commissions and subpoenas filed by Environmental Defense Fund, Inc. for the following:

- Frank Rotondi
- Corporate Representative of White Stallion Energy Center, LLC
- Corporate Representative of RPS JDC, Inc.
- Corporate Representative of Stanley Consultants, Inc.

Also enclosed are deposit checks for the witness fees. Should you have any questions regarding the commissions, subpoenas, or witness fees please contact our office. Thank you for your help and prompt attention to these matters.

Sincerely,

Paul Tough

PT/jam
Enclosures

cc (w/encl): Mr. Les Trobman (via hand delivery)

TCEQ DOCKET NO. 2009-0283-AIR
SOAH DOCKET NO. 582-09-3008

APPLICATION OF WHITE STALLION ENERGY CENTER, LLC FOR AIR QUALITY PERMIT NOS. 86088, HAP28, PAL26, AND PSD-TX-1160	§ § § § §	**BEFORE THE TEXAS COMMISSION** **ON** **ENVIRONMENTAL QUALITY**

REQUEST FOR COMMISSION AND SUBPOENA
REQUIRING THE ORAL DEPOSITION OF FRANK ROTONDI

TO BRIDGET C. BOHAC, CHIEF CLERK, TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Comes now, Environmental Defense Fund, Inc. ("EDF"), protestant in the above-captioned proceeding, and, pursuant to Texas Government Code Sections 2001.089 and 2001.094, requests that the Texas Commission on Environmental Quality ("TCEQ") issue:

1. A COMMISSION, in the form attached hereto,

a. Requiring the taking of the deposition of Frank Rotondi, identified during his testimony at the February 10, 2010 hearing in this matter as the President/CEO of White Stallion Energy Center, LLC, ("WSEC") at

10:30 A.M. ON THURSDAY MARCH 15, 2012
BOARD ROOM
HOLIDAY INN
15222 JOHN F KENNEDY BOULEVARD
HOUSTON, TX 77032, AND

b. Requiring an officer to whom the commission is addressed to:

(1) examine Frank Rotondi before the officer on the date and at the place named in the commission; and

(2) take answers under oath to questions asked Frank Rotondi by EDF, a party to the proceeding, TCEQ, or an attorney for EDF, a party or the agency; and

c. Requiring Frank Rotondi to remain in attendance from day to day until the deposition is begun and completed.

2. A SUBPOENA, in the form attached hereto, requiring Frank Rotondi to appear for his deposition as described above and to produce, at the time the deposition is taken, all books, records, papers, emails, facsimiles, text messages, communications, documents or other objects

in the possession, custody or control of Frank Rotondi and/or WSEC, their agents, representatives or consultants, referring or related to (1) the design or preparation of Site Plan 4, including the location of emission points; (2) the timing of the decision to design or prepare Site Plan 4; (3) the calculation or determination of emission rates related to Site Plan 4; and (4) any dispersion modeling or analysis of the emission impacts related to Site Plan 4, including all modeling input and output files.

The undersigned attorney for EDF has unsuccessfully attempted to secure the voluntary production of documents and appearance of Frank Rotondi for a deposition. The undersigned contacted counsel for Frank Rotondi via email on the afternoon of Friday, February 24th to request his cooperation in scheduling depositions. *See* Attachment A. Counsel for WSEC and Frank Rotondi responded by email that "discovery closed February 1, 2010." *See* Attachment B. Since that email response, WSEC has not cooperated with scheduling depositions or the production of documents. The District Court ordered remand "for the taking of additional evidence on the October 25, 2010 site plan submitted by WSEC to the U.S. Army Corps of Engineers ("Site Plan 4") and on its impacts on WSEC's TCEQ air permit application." In order to present evidence as to Site Plan 4 and the "impacts" associated with Site Plan 4, EDF needs to conduct some discovery. TCEQ has provided less than 30 days under the deadline for briefing and accompanying evidence to conduct discovery. Therefore, because WSEC will not voluntarily cooperate with discovery and because of the March 22, 2012 evidentiary briefing deadline, good cause exists for the requested commission and subpoena. Unless the requested commission and subpoena are issued, EDF's due process rights will be violated.

Because the location at which the deposition is to be taken is within 25 miles of Mr. Rotondi's residence, the maximum witness fee that he may be entitled to receive pursuant to

Texas Government Code Section 2001.103(a) is One Hundred Eighty Dollars ($180.00), the amount of the attached check payable to the Texas Commission on Environmental Quality as a deposit for such witness fee.

EDF respectfully requests that the TCEQ issue the requested commission and subpoena, and that EDF be granted such other relief to which it may be entitled.

Respectfully submitted,

McELROY, SULLIVAN & MILLER, L.L.P.
Thomas M. Weber
Texas Bar No. 00794828
Paul R. Tough
Texas Bar No. 24051440
P.O. Box 12127
Austin, Texas 78711
1201 Spyglass, Suite 200
Austin, Texas 78746
Tel. (512) 327-8111
Fax (512) 327-6566

ATTORNEYS FOR ENVIRONMENTAL DEFENSE FUND, INC.

By: _____ for
Thomas M. Weber

CERTIFICATE OF SERVICE

On March 2, 2012 a true and correct copy of the foregoing Request for Commission and Subpoena Requiring the Oral Deposition of Frank Rotondi was served by certified mail, return receipt requested, hand delivery and/or email on all counsel of record:

_____ for
Thomas M. Weber

SERVICE LIST

Nancy Olinger, Assistant Attorney General
Cynthia Woelk, Assistant Attorney General
Office of the General Counsel
Environmental Protection Section
P.O. Box 12548, Capitol Station (MC-018)
Austin, Texas 78711-2548
512/463-2012 FAX 512/320-0052

Gabriel Clark Leach
Ilan Levin
Environmental Integrity Project
1303 San Antonio St., Suite 200
Austin, Texas 78701
512/637-9477 FAX 512/584-8019

Eric Groten
Paulina Williams
Vinson & Elkins
2801 Via Fortuna, Suite 100
Austin, Texas 78746-7568
512/542-8400 FAX 512/542-8612

Stephanie Bergeron Perdue
Booker Harrison
TCEQ Legal Division MC 218
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0600 FAX 512/239-0606

Scott Humphrey
TCEQ Office of Public Interest Counsel
MC 103
P.O. Box 13087
Austin, Texas 78711-3087
512/239-6363 FAX 512/239-6377

Docket Clerk
TCEQ Office of the Chief Clerk MC 105
P.O. Box 13087
Austin, Texas 78711-3087
512/239-3300 FAX 512/239-3311

From: Tom Weber
Sent: Friday, February 24, 2012 3:40 PM
To: Eric Groten
Cc: booharri@tceq.state.tx.us; Nancy Olinger; Cynthia Woelk; Ilan Levin; Paul Tough; Gabriel Clark-Leach; Schenkkan, Pete; Mason, Thomas G.; Scott Humphrey
Subject: White Stallion

Eric,

Presumably you are in receipt of General Counsel Trobman's February 23, 2012, letter stating that "Briefs with accompanying evidence, as authorized by the Court's June 20, 2011 order, must be filed with the Office of the Chief Clerk no later than 5:00 pm on Thursday, March 22, 2012." As you will recall, Judge Livingston's Remand Order orders the "taking of additional evidence on the October 25, 2010 site plan submitted by WSEC to the U.S. Army Corps of Engineers ("Site Plan 4") and on its impacts on WSEC's TCEQ air permit application under applicable law."

In order to present evidence as to Site Plan 4 and the "impacts" associated with Site Plan 4, EDF needs to conduct some discovery. Less than 30 days has been provided under the deadline for briefing and presentation of evidence set out in General Counsel Trobman's letter. Therefore, I am contacting you to request your cooperation in scheduling depositions for the week of March 5th and/or March 12th and with regard to the production of documents prior to those depositions.

I would like to take the depositions of the following persons and entities: (1) Frank Rotondi, (2) pursuant to TRCP 199.2 (b)(1), a corporate designee or the corporate designees of WSEC with knowledge of the decision to, and timing of the decision to, prepare Site Plan 4, file Site Plan 4 with the U.S. Army Corps of Engineers, and with knowledge of any dispersion modeling performed with regards to Site Plan 4, (3) pursuant to TRCP 199.2 (b)(1), a corporate designee or the corporate designees of Stanley Consultants, Inc. with knowledge of (a) communications to, with and from WSEC, or any of WSEC's agents, representatives, or consultants, regarding the preparation of Site Plan 4 including knowledge regarding the timing of WSEC's instructions to prepare Site Plan 4 and (b) the preparation and design of Site Plan 4 including the location of emissions points, and (4) pursuant to TRCP 199.2 (b)(1), a corporate designee or the corporate designees of RPS regarding any air dispersion modeling performed with regard to Site Plan 4, if any. If you are willing to cooperate in producing these witnesses, I will prepare a request for production of documents for your review and comment.

If WSEC takes the position that either of (3) or (4) is not subject to the control of WSEC, please advise. Also, please advise the undersigned by noon on Tuesday February 29th whether your client will or will not make any or all of the witnesses available, so that I can take appropriate steps.

Thanks, Tom.

Thomas M. Weber
McElroy, Sullivan & Miller, L.L.P.
P.O. Box 12127
Austin, Tx. 78711
(512) 327-8111
(512) 327-6566 (fax)
tweber@msmtx.com
www.msmtx.com

Attachment A

From: Groten, Eric [mailto:egroten@velaw.com]
Sent: Friday, February 24, 2012 4:54 PM
To: Tom Weber
Cc: 'BOOHARRI@tceq.state.tx.us'; 'nancy.olinger@oag.state.tx.us'; 'cynthia.woelk@oag.state.tx.us'; 'ilevin@environmentalintegrity.org'; Paul Tough; 'gclark-leach@environmentalintegrity.org'; Schenkkan, Pete; 'TMason@gdhm.com'; 'SHUMPHRE@tceq.state.tx.us'
Subject: Re: White Stallion

Discovery closed February 1, 2010.

From: Tom Weber [mailto:tweber@msmtx.com]
Sent: Friday, February 24, 2012 03:40 PM
To: Groten, Eric
Cc: booharri@tceq.state.tx.us <booharri@tceq.state.tx.us>; Nancy Olinger <Nancy.Olinger@oag.state.tx.us>; Cynthia Woelk <Cynthia.Woelk@oag.state.tx.us>; Ilan Levin <ilevin@environmentalintegrity.org>; Paul Tough <ptough@msmtx.com>; Gabriel Clark-Leach <gclark-leach@environmentalintegrity.org>; Schenkkan, Pete; Mason, Thomas G. <TMason@gdhm.com>; Scott Humphrey <SHUMPHRE@tceq.state.tx.us>
Subject: White Stallion

Eric,

Presumably you are in receipt of General Counsel Trobman's February 23, 2012, letter stating that "Briefs with accompanying evidence, as authorized by the Court's June 20, 2011 order, must be filed with the Office of the Chief Clerk no later than 5:00 pm on Thursday, March 22, 2012." As you will recall, Judge Livingston's Remand Order orders the "taking of additional evidence on the October 25, 2010 site plan submitted by WSEC to the U.S. Army Corps of Engineers ("Site Plan 4") and on its impacts on WSEC's TCEQ air permit application under applicable law."

In order to present evidence as to Site Plan 4 and the "impacts" associated with Site Plan 4, EDF needs to conduct some discovery. Less than 30 days has been provided under the deadline for briefing and presentation of evidence set out in General Counsel Trobman's letter. Therefore, I am contacting you to request your cooperation in scheduling depositions for the week of March 5th and/or March 12th and with regard to the production of documents prior to those depositions..

I would like to take the depositions of the following persons and entities: (1) Frank Rotondi, (2) pursuant to TRCP 199.2 (b)(1), a corporate designee or the corporate designees of WSEC with knowledge of the decision to, and timing of the decision to, prepare Site Plan 4, file Site Plan 4 with the U.S. Army Corps of Engineers, and with knowledge of any dispersion modeling performed with regards to Site Plan 4, (3) pursuant to TRCP 199.2 (b)(1), a corporate designee or the corporate designees of Stanley Consultants, Inc. with knowledge of (a) communications to, with and from WSEC, or any of WSEC's agents, representatives, or consultants, regarding the preparation of Site Plan 4 including knowledge regarding the timing of WSEC's instructions to prepare Site Plan 4 and (b) the preparation and design of Site Plan 4 including the location of emissions points, and (4) pursuant to TRCP 199.2 (b)(1), a corporate designee or the corporate designees of RPS regarding any air dispersion modeling performed with regard to Site Plan 4, if any. If you are willing to

Attachment B

cooperate in producing these witnesses, I will prepare a request for production of documents for your review and comment.

If WSEC takes the position that either of (3) or (4) is not subject to the control of WSEC, please advise. Also, please advise the undersigned by noon on Tuesday February 29th whether your client will or will not make any or all of the witnesses available, so that I can take appropriate steps.

Thanks, Tom.

Thomas M. Weber
McElroy, Sullivan & Miller, L.L.P.
P.O. Box 12127
Austin, Tx. 78711
(512) 327-8111
(512) 327-6566 (fax)
tweber@msmtx.com
www.msmtx.com

McELROY, SULLIVAN & MILLER, LLP
PETTY CASH ACCOUNT
P.O. BOX 12127
AUSTIN, TX 78711-2127

11764

30-9/1140
59

DATE 3/2/12

PAY TO THE ORDER OF TCEQ $ 180.00

One hundred eighty and 00/100 DOLLARS

Security Features Details on Back.

Frost
www.frostbank.com

FOR Witness dep fee Rotondi

Patricia D. Brees MP

⑈011764⑈ ⑆114000093⑆ 591053892⑈

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
TCEQ Docket No. 2009-0283-AIR
SOAH Docket No. 582-09-3008

APPLICATION OF WHITE STALLION ENERGY CENTER, LLC FOR AIR QUALITY PERMIT NOS. 86088, HAP28, PAL26, AND PSD-TX-1160	§ § § § §	**BEFORE THE TEXAS COMMISSION** **ON** **ENVIRONMENTAL QUALITY**

COMMISSION TO TAKE THE ORAL DEPOSITION OF FRANK ROTONDI

TO THE OFFICERS AUTHORIZED BY STATUTE TO TAKE A DEPOSITION:

You are hereby required to take the deposition of:

FRANK ROTONDI
1302 WAUGH DRIVE #896
HOUSTON, TX 77019

at the following time and place:

10:30 A.M. ON THURSDAY, MARCH 15, 2012
BOARD ROOM
HOLIDAY INN
15222 JOHN F KENNEDY BOULEVARD
HOUSTON, TX 77032

You are further hereby required to:

(1) examine the witness, Frank Rotondi, before you on the date and at the place named above; and

(2) take answers under oath to questions asked the witness, Frank Rotondi, by EDF, a party to the proceeding, the state agency, or an attorney for EDF, a party or the agency.

This commission authorizes the issuance of any subpoena necessary to require that the witness, Frank Rotondi, appear and produce, at the time the deposition is taken, books, records, papers, emails, facsimiles, text messages, communications, documents or other objects that may be necessary and proper for the purpose of the proceeding, and requires the witness, Frank Rotondi, to remain in attendance from day to day until the deposition is begun and completed.

Issued at Austin, Texas on this the ____day of_____, 2012.

_____
Texas Commission on Environmental Quality

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
TCEQ Docket No. 2009-0283-AIR
SOAH Docket No. 582-09-3008

APPLICATION OF WHITE STALLION ENERGY CENTER, LLC FOR AIR QUALITY PERMIT NOS. 86088, HAP28, PAL26, AND PSD-TX-1160	§ § § § §	**BEFORE THE TEXAS COMMISSION** **ON** **ENVIRONMENTAL QUALITY**

SUBPOENA FOR THE ORAL DEPOSITION OF FRANK ROTONDI

TO ANY SHERIFF OR CONSTABLE OF THE STATE OF TEXAS:

This subpoena is to be served on the following person, who has been summoned to appear as a witness at the insistence of Environmental Defense Fund, Inc.:

FRANK ROTONDI
1302 WAUGH DRIVE #896
HOUSTON, TX 77019

FRANK ROTONDI, YOU ARE COMMANDED to appear and give testimony, as a witness in the above-styled proceeding now pending before the Texas Commission on Environmental Quality, at a deposition at the following time and place:

10:30 A.M. ON THURSDAY, MARCH 15, 2012
BOARD ROOM
HOLIDAY INN
15222 JOHN F KENNEDY BOULEVARD
HOUSTON, TX 77032

YOU ARE FURTHER COMMANDED to produce, at the time the deposition is taken, and to permit the inspection and copying of, all books, records, papers, emails, facsimiles, text messages, communications, documents or other objects in the possession, custody or control of Frank Rotondi and/or White Stallion Energy Center, LLC, their agents, representatives, or consultants, referring or related to (1) the design or preparation of Site Plan 4, including the location of emission points; (2) the timing of the decision to design or prepare Site Plan 4; (3) the calculation or determination of emission rates related to Site Plan 4; and (4) any dispersion modeling or analysis of the emission impacts related to Site Plan 4, including all modeling input and output files.

Issued at Austin, Texas on this the ____ day of _____, 2012.

_____
Texas Commission on Environmental Quality

RETURN OF SUBPOENA

I certify that I served this Subpoena by delivering a true and correct copy to Frank Rotondi at _____ o'clock __.m. on _____, ___, 2012.

_____
Signature

_____
Typed or Printed Name

TCEQ DOCKET NO. 2009-0283-AIR
SOAH DOCKET NO. 582-09-3008

APPLICATION OF WHITE STALLION ENERGY CENTER, LLC FOR AIR QUALITY PERMIT NOS. 86088, HAP28, PAL26, AND PSD-TX-1160	§ § § § §	**BEFORE THE TEXAS COMMISSION** **ON** **ENVIRONMENTAL QUALITY**

REQUEST FOR COMMISSION AND SUBPOENA
REQUIRING THE ORAL DEPOSITION OF CORPORATE
REPRESENTATIVE OF WHITE STALLION ENERGY CENTER, LLC

TO BRIDGET C. BOHAC, CHIEF CLERK, TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Comes now, Environmental Defense Fund, Inc. ("EDF"), protestant in the above-captioned proceeding, and, pursuant to Texas Government Code Sections 2001.089 and 2001.094, requests that the Texas Commission on Environmental Quality ("TCEQ") issue:

1. A COMMISSION, in the form attached hereto,

a. Requiring the taking of the deposition of Corporate Representative of White Stallion Energy Center, LLC ("WSEC") with knowledge of the decision to, and timing of the decision to, prepare Site Plan 4, file Site Plan 4 with the U.S. Army Corps of Engineers, and with knowledge of any dispersion modeling performed with regards to Site Plan 4 at

10:30 A.M. ON FRIDAY, MARCH 16, 2012
BOARD ROOM
HOLIDAY INN
15222 JOHN F KENNEDY BOULEVARD
HOUSTON, TX 77032; AND

b. Requiring an officer to whom the commission is addressed to:

(1) examine Corporate Representative of WSEC before the officer on the date and at the place named in the commission; and

(2) take answers under oath to questions asked Corporate Representative of WSEC by EDF, a party to the proceeding, TCEQ, or an attorney for EDF, a party or the agency; and

c. Requiring Corporate Representative of WSEC to remain in attendance from day to day until the deposition is begun and completed.

2. A SUBPOENA, in the form attached hereto, requiring Corporate Representative of WSEC to appear for his deposition as described above and to produce, at the time the deposition is taken,

all books, records, papers, emails, facsimiles, text messages, communications, documents or other objects in the possession, custody or control of Corporate Representative of WSEC referring or related to (1) the design or preparation of Site Plan 4, including the location of emission points; (2) the timing of the decision to design or prepare Site Plan 4; (3) the calculation or determination of emission rates related to Site Plan 4; and (4) any dispersion modeling or analysis of the emission impacts related to Site Plan 4, including all modeling input and output files.

The undersigned attorney for EDF has unsuccessfully attempted to secure the voluntary production of documents and appearance of Corporate Representative of WSEC for a deposition. The undersigned contacted counsel for WSEC via email on the afternoon of Friday, February 24th to request his cooperation in scheduling depositions. *See* Attachment A. Counsel for WSEC responded by email that "discovery closed February 1, 2010." *See* Attachment B. Since that email response, WSEC has not cooperated with scheduling depositions or the production of documents. The District Court ordered remand "for the taking of additional evidence on the October 25, 2010 site plan submitted by WSEC to the U.S. Army Corps of Engineers ("Site Plan 4") and on its impacts on WSEC's TCEQ air permit application." In order to present evidence as to Site Plan 4 and the "impacts" associated with Site Plan 4, EDF needs to conduct some discovery. TCEQ has provided less than 30 days under the deadline for briefing and accompanying evidence to conduct discovery. Therefore, because WSEC will not voluntarily cooperate with discovery and because of the March 22, 2012 evidentiary briefing deadline, good cause exists for the requested commission and subpoena. Unless the requested commission and subpoena are issued, EDF's due process rights will be violated.

Because the WSEC is a party it is not entitled to receive expenses under Texas Government Code Section 2001.103.

EDF respectfully requests that the TCEQ issue the requested commission and subpoena, and that EDF be granted such other relief to which it may be entitled.

Respectfully submitted,

McELROY, SULLIVAN & MILLER, L.L.P.
Thomas M. Weber
Texas Bar No. 00794828
Paul R. Tough
Texas Bar No. 24051440
P.O. Box 12127
Austin, Texas 78711
1201 Spyglass, Suite 200
Austin, Texas 78746
Tel. (512) 327-8111
Fax (512) 327-6566

ATTORNEYS FOR ENVIRONMENTAL DEFENSE FUND, INC.

By: _____
Thomas M. Weber

CERTIFICATE OF SERVICE

On March 2, 2012 a true and correct copy of the foregoing Request for Commission and Subpoena Requiring the Oral Deposition of Corporate Representative of WSEC was served by certified mail, return receipt requested, hand delivery and/or email on all counsel of record:

_____
Thomas M. Weber

SERVICE LIST

Nancy Olinger, Assistant Attorney General
Cynthia Woelk, Assistant Attorney General
Office of the General Counsel
Environmental Protection Section
P.O. Box 12548, Capitol Station (MC-018)
Austin, Texas 78711-2548
512/463-2012 FAX 512/320-0052

Gabriel Clark Leach
Ilan Levin
Environmental Integrity Project
1303 San Antonio St., Suite 200
Austin, Texas 78701
512/637-9477 FAX 512/584-8019

Eric Groten
Paulina Williams
Vinson & Elkins
2801 Via Fortuna, Suite 100
Austin, Texas 78746-7568
512/542-8400 FAX 512/542-8612

Stephanie Bergeron Perdue
Booker Harrison
TCEQ Legal Division MC 218
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0600 FAX 512/239-0606

Scott Humphrey
TCEQ Office of Public Interest Counsel
MC 103
P.O. Box 13087
Austin, Texas 78711-3087
512/239-6363 FAX 512/239-6377

Docket Clerk
TCEQ Office of the Chief Clerk MC 105
P.O. Box 13087
Austin, Texas 78711-3087
512/239-3300 FAX 512/239-3311

From: Tom Weber
Sent: Friday, February 24, 2012 3:40 PM
To: Eric Groten
Cc: booharri@tceq.state.tx.us; Nancy Olinger; Cynthia Woelk; Ilan Levin; Paul Tough; Gabriel Clark-Leach; Schenkkan, Pete; Mason, Thomas G.; Scott Humphrey
Subject: White Stallion

Eric,

Presumably you are in receipt of General Counsel Trobman's February 23, 2012, letter stating that "Briefs with accompanying evidence, as authorized by the Court's June 20, 2011 order, must be filed with the Office of the Chief Clerk no later than 5:00 pm on Thursday, March 22, 2012." As you will recall, Judge Livingston's Remand Order orders the "taking of additional evidence on the October 25, 2010 site plan submitted by WSEC to the U.S. Army Corps of Engineers ("Site Plan 4") and on its impacts on WSEC's TCEQ air permit application under applicable law."

In order to present evidence as to Site Plan 4 and the "impacts" associated with Site Plan 4, EDF needs to conduct some discovery. Less than 30 days has been provided under the deadline for briefing and presentation of evidence set out in General Counsel Trobman's letter. Therefore, I am contacting you to request your cooperation in scheduling depositions for the week of March 5th and/or March 12th and with regard to the production of documents prior to those depositions.

I would like to take the depositions of the following persons and entities: (1) Frank Rotondi, (2) pursuant to TRCP 199.2 (b)(1), a corporate designee or the corporate designees of WSEC with knowledge of the decision to, and timing of the decision to, prepare Site Plan 4, file Site Plan 4 with the U.S. Army Corps of Engineers, and with knowledge of any dispersion modeling performed with regards to Site Plan 4, (3) pursuant to TRCP 199.2 (b)(1), a corporate designee or the corporate designees of Stanley Consultants, Inc. with knowledge of (a) communications to, with and from WSEC, or any of WSEC's agents, representatives, or consultants, regarding the preparation of Site Plan 4 including knowledge regarding the timing of WSEC's instructions to prepare Site Plan 4 and (b) the preparation and design of Site Plan 4 including the location of emissions points, and (4) pursuant to TRCP 199.2 (b)(1), a corporate designee or the corporate designees of RPS regarding any air dispersion modeling performed with regard to Site Plan 4, if any. If you are willing to cooperate in producing these witnesses, I will prepare a request for production of documents for your review and comment.

If WSEC takes the position that either of (3) or (4) is not subject to the control of WSEC, please advise. Also, please advise the undersigned by noon on Tuesday February 29th whether your client will or will not make any or all of the witnesses available, so that I can take appropriate steps.

Thanks, Tom.

Thomas M. Weber
McElroy, Sullivan & Miller, L.L.P.
P.O. Box 12127
Austin, Tx. 78711
(512) 327-8111
(512) 327-6566 (fax)
tweber@msmtx.com
www.msmtx.com

Attachment A

From: Groten, Eric [mailto:egroten@velaw.com]
Sent: Friday, February 24, 2012 4:54 PM
To: Tom Weber
Cc: 'BOOHARRI@tceq.state.tx.us'; 'nancy.olinger@oag.state.tx.us'; 'cynthia.woelk@oag.state.tx.us'; 'ilevin@environmentalintegrity.org'; Paul Tough; 'gclark-leach@environmentalintegrity.org'; Schenkkan, Pete; 'TMason@gdhm.com'; 'SHUMPHRE@tceq.state.tx.us'
Subject: Re: White Stallion

Discovery closed February 1, 2010.

From: Tom Weber [mailto:tweber@msmtx.com]
Sent: Friday, February 24, 2012 03:40 PM
To: Groten, Eric
Cc: booharri@tceq.state.tx.us <booharri@tceq.state.tx.us>; Nancy Olinger <Nancy.Olinger@oag.state.tx.us>; Cynthia Woelk <Cynthia.Woelk@oag.state.tx.us>; Ilan Levin <ilevin@environmentalintegrity.org>; Paul Tough <ptough@msmtx.com>; Gabriel Clark-Leach <gclark-leach@environmentalintegrity.org>; Schenkkan, Pete; Mason, Thomas G. <TMason@gdhm.com>; Scott Humphrey <SHUMPHRE@tceq.state.tx.us>
Subject: White Stallion

Eric,

Presumably you are in receipt of General Counsel Trobman's February 23, 2012, letter stating that "Briefs with accompanying evidence, as authorized by the Court's June 20, 2011 order, must be filed with the Office of the Chief Clerk no later than 5:00 pm on Thursday, March 22, 2012." As you will recall, Judge Livingston's Remand Order orders the "taking of additional evidence on the October 25, 2010 site plan submitted by WSEC to the U.S. Army Corps of Engineers ("Site Plan 4") and on its impacts on WSEC's TCEQ air permit application under applicable law."

In order to present evidence as to Site Plan 4 and the "impacts" associated with Site Plan 4, EDF needs to conduct some discovery. Less than 30 days has been provided under the deadline for briefing and presentation of evidence set out in General Counsel Trobman's letter. Therefore, I am contacting you to request your cooperation in scheduling depositions for the week of March 5th and/or March 12th and with regard to the production of documents prior to those depositions..

I would like to take the depositions of the following persons and entities: (1) Frank Rotondi, (2) pursuant to TRCP 199.2 (b)(1), a corporate designee or the corporate designees of WSEC with knowledge of the decision to, and timing of the decision to, prepare Site Plan 4, file Site Plan 4 with the U.S. Army Corps of Engineers, and with knowledge of any dispersion modeling performed with regards to Site Plan 4, (3) pursuant to TRCP 199.2 (b)(1), a corporate designee or the corporate designees of Stanley Consultants, Inc. with knowledge of (a) communications to, with and from WSEC, or any of WSEC's agents, representatives, or consultants, regarding the preparation of Site Plan 4 including knowledge regarding the timing of WSEC's instructions to prepare Site Plan 4 and (b) the preparation and design of Site Plan 4 including the location of emissions points, and (4) pursuant to TRCP 199.2 (b)(1), a corporate designee or the corporate designees of RPS regarding any air dispersion modeling performed with regard to Site Plan 4, if any. If you are willing to

Attachment B

cooperate in producing these witnesses, I will prepare a request for production of documents for your review and comment.

If WSEC takes the position that either of (3) or (4) is not subject to the control of WSEC, please advise. Also, please advise the undersigned by noon on Tuesday February 29th whether your client will or will not make any or all of the witnesses available, so that I can take appropriate steps.

Thanks, Tom.

Thomas M. Weber
McElroy, Sullivan & Miller, L.L.P.
P.O. Box 12127
Austin, Tx. 78711
(512) 327-8111
(512) 327-6566 (fax)
tweber@msmtx.com
www.msmtx.com

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
TCEQ Docket No. 2009-0283-AIR
SOAH Docket No. 582-09-3008

APPLICATION OF WHITE STALLION ENERGY CENTER, LLC FOR AIR QUALITY PERMIT NOS. 86088, HAP28, PAL26, AND PSD-TX-1160	§ § § § §	**BEFORE THE TEXAS COMMISSION** **ON** **ENVIRONMENTAL QUALITY**

COMMISSION TO TAKE THE ORAL DEPOSITION OF CORPORATE REPRESENTATIVE OF WHITE STALLION ENERGY CENTER, LLC

TO THE OFFICERS AUTHORIZED BY STATUTE TO TAKE A DEPOSITION:

You are hereby required to take the deposition of:

Corporate Representative of White Stallion Energy Center, LLC
1302 WAUGH DRIVE #896
HOUSTON, TX 77019

with knowledge of the decision to, and timing of the decision to, prepare Site Plan 4, file Site Plan 4 with the U.S. Army Corps of Engineers, and with knowledge of any dispersion modeling performed with regards to Site Plan 4 at the following time and place:

10:30 A.M. ON FRIDAY MARCH 16, 2012
BOARD ROOM
HOLIDAY INN
15222 JOHN F KENNEDY BOULEVARD
HOUSTON, TX 77032

You are further hereby required to:

(1) examine the witness, Corporate Representative of White Stallion Energy Center, LLC ("WSEC"), before you on the date and at the place named above; and

(2) take answers under oath to questions asked the witness, Corporate Representative of WSEC, by EDF, a party to the proceeding, the state agency, or an attorney for EDF, a party or the agency.

This commission authorizes the issuance of any subpoena necessary to require that the witness, Corporate Representative of WSEC, appear and produce, at the time the deposition is taken, books, records, papers, emails, facsimiles, text messages, communications, documents or other objects that may be necessary and proper for the purpose of the proceeding, and requires the witness, Corporate Representative of WSEC, to remain in attendance from day to day until the deposition is begun and completed.

Issued at Austin, Texas on this the ____day of_____, 2012.

_____
Texas Commission on Environmental Quality

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
TCEQ Docket No. 2009-0283-AIR
SOAH Docket No. 582-09-3008

APPLICATION OF WHITE STALLION ENERGY CENTER, LLC FOR AIR QUALITY PERMIT NOS. 86088, HAP28, PAL26, AND PSD-TX-1160	§ § § § §	**BEFORE THE TEXAS COMMISSION** **ON** **ENVIRONMENTAL QUALITY**

SUBPOENA FOR THE ORAL DEPOSITION OF
CORPORATE REPRESENTATIVE OF WHITE STALLION ENERGY CENTER, LLC

TO ANY SHERIFF OR CONSTABLE OF THE STATE OF TEXAS:

This subpoena is to be served on the following person, who has been summoned to appear as a witness at the insistence of Environmental Defense Fund, Inc.:

Corporate Representative of White Stallion Energy Center, LLC
1302 WAUGH DRIVE #896
HOUSTON, TX 77019

CORPORATE REPRESENTATIVE OF WHITE STALLION ENERGY CENTER, LLC, YOU ARE COMMANDED to appear and give testimony, as a witness in the above-styled proceeding now pending before the Texas Commission on Environmental Quality, at a deposition at the following time and place:

10:30 A.M. ON FRIDAY, MARCH 16, 2012
BOARD ROOM
HOLIDAY INN
15222 JOHN F KENNEDY BOULEVARD
HOUSTON, TX 77032

YOU ARE FURTHER COMMANDED to produce, at the time the deposition is taken, and to permit the inspection and copying of, all books, records, papers, emails, facsimiles, text messages, communications, documents or other objects in the possession, custody or control of White Stallion Energy Center, LLC referring or related to (1) the design or preparation of Site Plan 4, including the location of emission points; (2) the timing of the decision to design or prepare Site Plan 4; (3) the calculation or determination of emission rates related to Site Plan 4; and (4) any dispersion modeling or analysis of the emission impacts related to Site Plan 4, including all modeling input and output files.

Issued at Austin, Texas on this the ____ day of _____, 2012.

_____
Texas Commission on Environmental Quality

RETURN OF SUBPOENA

I certify that I served this Subpoena by delivering a true and correct copy to Corporate Representative of White Stallion Energy Center, LLC at _____ o'clock __.m. on _____, ___, 2012.

_____

Signature

_____

Typed or Printed Name

TCEQ DOCKET NO. 2009-0283-AIR
SOAH DOCKET NO. 582-09-3008

APPLICATION OF WHITE STALLION ENERGY CENTER, LLC FOR AIR QUALITY PERMIT NOS. 86088, HAP28, PAL26, AND PSD-TX-1160	§ § § § §	**BEFORE THE TEXAS COMMISSION** **ON** **ENVIRONMENTAL QUALITY**

REQUEST FOR COMMISSION AND SUBPOENA
REQUIRING THE ORAL DEPOSITION OF CORPORATE
REPRESENTATIVE OF RPS JDC, INC.

TO BRIDGET C. BOHAC, CHIEF CLERK, TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Comes now, Environmental Defense Fund, Inc. ("EDF"), protestant in the above-captioned proceeding, and, pursuant to Texas Government Code Sections 2001.089 and 2001.094, requests that the Texas Commission on Environmental Quality ("TCEQ") issue:

1. A COMMISSION, in the form attached hereto,

a. Requiring the taking of the deposition of Corporate Representative of RPS JDC, Inc. ("RPS") with knowledge regarding any air dispersion modeling performed with regard to White Stallion Energy Center, LLC's Site Plan 4, which was filed with the U.S. Army Corps of Engineers on or about November 2011, and with knowledge regarding the timing of any such dispersion modeling at

10:00 A.M. ON TUESDAY, MARCH 13, 2012
MCELROY, SULLIVAN & MILLER, LLP
1201 SPYGLASS DRIVE, SUITE 200
AUSTIN, TX 78746, AND

b. Requiring an officer to whom the commission is addressed to:

(1) examine Corporate Representative of RPS before the officer on the date and at the place named in the commission; and

(2) take answers under oath to questions asked Corporate Representative of RPS by EDF, a party to the proceeding, TCEQ, or an attorney for EDF, a party or the agency; and

c. Requiring Corporate Representative of RPS to remain in attendance from day to day until the deposition is begun and completed.

2. A SUBPOENA, in the form attached hereto, requiring Corporate Representative of RPS to appear for his deposition as described above and to produce, at the time the deposition is taken,

all books, records, papers, emails, facsimiles, text messages, communications, documents or other objects in the possession, custody or control of Corporate Representative of RPS referring or related to (1) the design or preparation of Site Plan 4, including the location of emission points; (2) the timing of the decision to design or prepare Site Plan 4; (3) the calculation or determination of emission rates related to Site Plan 4; and (4) any dispersion modeling or analysis of the emission impacts related to Site Plan 4, including all modeling input and output files.

The undersigned attorney for EDF has unsuccessfully attempted to secure the voluntary production of documents and appearance of Corporate Representative of RPS for a deposition. WSEC retained RPS to assist with the permitting of the proposed power plant in Matagorda County, Texas. The undersigned contacted counsel for WSEC via email on the afternoon of Friday, February 24th to request his cooperation in scheduling depositions. *See* Attachment A. Counsel for WSEC responded by email that "discovery closed February 1, 2010." *See* Attachment B. Since that email response, WSEC has not cooperated with scheduling depositions or the production of documents. The District Court ordered remand "for the taking of additional evidence on the October 25, 2010 site plan submitted by WSEC to the U.S. Army Corps of Engineers ("Site Plan 4") and on its impacts on WSEC's TCEQ air permit application." In order to present evidence as to Site Plan 4 and the "impacts" associated with Site Plan 4, EDF needs to conduct some discovery. TCEQ has provided less than 30 days under the deadline for briefing and accompanying evidence to conduct discovery. Therefore, because WSEC will not voluntarily cooperate with discovery and because of the March 22, 2012 evidentiary briefing deadline, good cause exists for the requested commission and subpoena. Unless the requested commission and subpoena are issued, EDF's due process rights will be violated.

Because the location of the deposition is to be taken is within 25 miles of the offices of RPS and because the residence of Corporate Representative of RPS is unknown at this time, the maximum witness fee that Corporate Representative of RPS may be entitled to receive pursuant to Texas Government Code Section 2001.103(a) is One Hundred Seventy Nine Dollars ($179.00), the amount of the attached check payable to the Texas Commission on Environmental Quality as a deposit for such witness fee.

EDF respectfully requests that the TCEQ issue the requested commission and subpoena, and that EDF be granted such other relief to which it may be entitled.

Respectfully submitted,

McELROY, SULLIVAN & MILLER, L.L.P.
Thomas M. Weber
Texas Bar No. 00794828
Paul R. Tough
Texas Bar No. 24051440
P.O. Box 12127
Austin, Texas 78711
1201 Spyglass, Suite 200
Austin, Texas 78746
Tel. (512) 327-8111
Fax (512) 327-6566

ATTORNEYS FOR ENVIRONMENTAL DEFENSE FUND, INC.

By: _____
Thomas M. Weber

CERTIFICATE OF SERVICE

On March 2, 2012 a true and correct copy of the foregoing Request for Commission and Subpoena Requiring the Oral Deposition of Corporate Representative of RPS was served by certified mail, return receipt requested, hand delivery and/or email on all counsel of record:

Thomas M. Weber

SERVICE LIST

Nancy Olinger, Assistant Attorney General
Cynthia Woelk, Assistant Attorney General
Office of the General Counsel
Environmental Protection Section
P.O. Box 12548, Capitol Station (MC-018)
Austin, Texas 78711-2548
512/463-2012 FAX 512/320-0052

Gabriel Clark Leach
Ilan Levin
Environmental Integrity Project
1303 San Antonio St., Suite 200
Austin, Texas 78701
512/637-9477 FAX 512/584-8019

Eric Groten
Paulina Williams
Vinson & Elkins
2801 Via Fortuna, Suite 100
Austin, Texas 78746-7568
512/542-8400 FAX 512/542-8612

Stephanie Bergeron Perdue
Booker Harrison
TCEQ Legal Division MC 218
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0600 FAX 512/239-0606

Scott Humphrey
TCEQ Office of Public Interest Counsel
MC 103
P.O. Box 13087
Austin, Texas 78711-3087
512/239-6363 FAX 512/239-6377

Docket Clerk
TCEQ Office of the Chief Clerk MC 105
P.O. Box 13087
Austin, Texas 78711-3087
512/239-3300 FAX 512/239-3311

From: Tom Weber
Sent: Friday, February 24, 2012 3:40 PM
To: Eric Groten
Cc: booharri@tceq.state.tx.us; Nancy Olinger; Cynthia Woelk; Ilan Levin; Paul Tough; Gabriel Clark-Leach; Schenkkan, Pete; Mason, Thomas G.; Scott Humphrey
Subject: White Stallion

Eric,

Presumably you are in receipt of General Counsel Trobman's February 23, 2012, letter stating that "Briefs with accompanying evidence, as authorized by the Court's June 20, 2011 order, must be filed with the Office of the Chief Clerk no later than 5:00 pm on Thursday, March 22, 2012." As you will recall, Judge Livingston's Remand Order orders the "taking of additional evidence on the October 25, 2010 site plan submitted by WSEC to the U.S. Army Corps of Engineers ("Site Plan 4") and on its impacts on WSEC's TCEQ air permit application under applicable law."

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If WSEC takes the position that either of (3) or (4) is not subject to the control of WSEC, please advise. Also, please advise the undersigned by noon on Tuesday February 29th whether your client will or will not make any or all of the witnesses available, so that I can take appropriate steps.

Thanks, Tom.

Thomas M. Weber
McElroy, Sullivan & Miller, L.L.P.
P.O. Box 12127
Austin, Tx. 78711
(512) 327-8111
(512) 327-6566 (fax)
tweber@msmtx.com
www.msmtx.com

Attachment A

From: Groten, Eric [mailto:egroten@velaw.com]
Sent: Friday, February 24, 2012 4:54 PM
To: Tom Weber
Cc: 'BOOHARRI@tceq.state.tx.us'; 'nancy.olinger@oag.state.tx.us'; 'cynthia.woelk@oag.state.tx.us'; 'ilevin@environmentalintegrity.org'; Paul Tough; 'gclark-leach@environmentalintegrity.org'; Schenkkan, Pete; 'TMason@gdhm.com'; 'SHUMPHRE@tceq.state.tx.us'
Subject: Re: White Stallion

Discovery closed February 1, 2010.

From: Tom Weber [mailto:tweber@msmtx.com]
Sent: Friday, February 24, 2012 03:40 PM
To: Groten, Eric
Cc: booharri@tceq.state.tx.us <booharri@tceq.state.tx.us>; Nancy Olinger <Nancy.Olinger@oag.state.tx.us>; Cynthia Woelk <Cynthia.Woelk@oag.state.tx.us>; Ilan Levin <ilevin@environmentalintegrity.org>; Paul Tough <ptough@msmtx.com>; Gabriel Clark-Leach <gclark-leach@environmentalintegrity.org>; Schenkkan, Pete; Mason, Thomas G. <TMason@gdhm.com>; Scott Humphrey <SHUMPHRE@tceq.state.tx.us>
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Attachment B

cooperate in producing these witnesses, I will prepare a request for production of documents for your review and comment.

If WSEC takes the position that either of (3) or (4) is not subject to the control of WSEC, please advise. Also, please advise the undersigned by noon on Tuesday February 29th whether your client will or will not make any or all of the witnesses available, so that I can take appropriate steps.

Thanks, Tom.

Thomas M. Weber
McElroy, Sullivan & Miller, L.L.P.
P.O. Box 12127
Austin, Tx. 78711
(512) 327-8111
(512) 327-6566 (fax)
tweber@msmtx.com
www.msmtx.com

McELROY, SULLIVAN & MILLER, LLP
PETTY CASH ACCOUNT
P.O. BOX 12127
AUSTIN, TX 78711-2127

11766

30-9/1140
59

DATE 3/2/12

PAY TO THE ORDER OF ICEQ $ 179.00

One hundred seventy-Nine and 00/100 DOLLARS

Security Features Details on Back.

Frost
www.frostbank.com

FOR Witness fee deposit RPS

Patricia D. Brees

⑈011766⑈ ⑆114000093⑆ 5910538921⑈

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
TCEQ Docket No. 2009-0283-AIR
SOAH Docket No. 582-09-3008

APPLICATION OF WHITE STALLION ENERGY CENTER, LLC FOR AIR QUALITY PERMIT NOS. 86088, HAP28, PAL26, AND PSD-TX-1160	§ § § § §	**BEFORE THE TEXAS COMMISSION** **ON** **ENVIRONMENTAL QUALITY**

COMMISSION TO TAKE THE ORAL DEPOSITION OF CORPORATE REPRESENTATIVE OF RPS JDC, INC.

TO THE OFFICERS AUTHORIZED BY STATUTE TO TAKE A DEPOSITION:

You are hereby required to take the deposition of:

Corporate Representative of RPS JDC, Inc.
Cielo Center
1250 South Capital of Texas Highway, Building Three, Suite 200
Austin, TX 78746

with knowledge regarding any air dispersion modeling performed with regard to White Stallion Energy Center, LLC's Site Plan 4, which was filed with the U.S. Army Corps of Engineers on or about November 2011, and with knowledge regarding the timing of any such dispersion modeling at the following time and place:

10:00 A.M. ON TUESDAY, MARCH 13, 2012
MCELROY, SULLIVAN & MILLER, LLP
1201 SPYGLASS DRIVE, SUITE 200
AUSTIN, TX 78746

You are further hereby required to:

(1) examine the witness, Corporate Representative of RPS JDC, Inc. ("RPS"), before you on the date and at the place named above; and

(2) take answers under oath to questions asked the witness, Corporate Representative of RPS, by EDF, a party to the proceeding, the state agency, or an attorney for EDF, a party or the agency.

This commission authorizes the issuance of any subpoena necessary to require that the witness, Corporate Representative of RPS, appear and produce, at the time the deposition is taken, books, records, papers, emails, facsimiles, text messages, communications, documents or other objects that may be necessary and proper for the purpose of the proceeding, and requires the witness, Corporate Representative of RPS, to remain in attendance from day to day until the deposition is begun and completed.

Issued at Austin, Texas on this the ____day of_____, 2012.

_____
Texas Commission on Environmental Quality

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
TCEQ Docket No. 2009-0283-AIR
SOAH Docket No. 582-09-3008

APPLICATION OF WHITE STALLION ENERGY CENTER, LLC FOR AIR QUALITY PERMIT NOS. 86088, HAP28, PAL26, AND PSD-TX-1160	§ § § § §	**BEFORE THE TEXAS COMMISSION** **ON** **ENVIRONMENTAL QUALITY**

SUBPOENA FOR THE ORAL DEPOSITION OF
CORPORATE REPRESENTATIVE OF RPS JDC, INC.

TO ANY SHERIFF OR CONSTABLE OF THE STATE OF TEXAS:

This subpoena is to be served on the following person, who has been summoned to appear as a witness at the insistence of Environmental Defense Fund, Inc.:

Corporate Representative of RPS JDC, Inc.
Cielo Center
1250 South Capital of Texas Highway, Building Three, Suite 200
Austin, TX 78746

CORPORATE REPRESENTATIVE OF RPS JDC, INC., YOU ARE COMMANDED to appear and give testimony, as a witness in the above-styled proceeding now pending before the Texas Commission on Environmental Quality, at a deposition at the following time and place:

10:00 A.M. ON TUESDAY, MARCH 13, 2012
MCELROY, SULLIVAN & MILLER, LLP
1201 SPYGLASS DRIVE, SUITE 200
AUSTIN, TX 78746

YOU ARE FURTHER COMMANDED to produce, at the time the deposition is taken, and to permit the inspection and copying of, all books, records, papers, emails, facsimiles, text messages, communications, documents or other objects in the possession, custody or control of RPS JDC, Inc. referring or related to (1) the design or preparation of White Stallion Energy Center LLC's Site Plan 4, including the location of emission points; (2) the timing of the decision to design or prepare Site Plan 4; (3) the calculation or determination of emission rates related to Site Plan 4; and (4) any dispersion modeling or analysis of the emission impacts related to Site Plan 4, including all modeling input and output files.

Issued at Austin, Texas on this the ____ day of _____, 2012.

_____
Texas Commission on Environmental Quality

RETURN OF SUBPOENA

I certify that I served this Subpoena by delivering a true and correct copy to Corporate Representative of RPS JDC, Inc. at _____ o'clock __.m. on _____, ___, 2012.

_____

Signature

_____

Typed or Printed Name

TCEQ DOCKET NO. 2009-0283-AIR
SOAH DOCKET NO. 582-09-3008

APPLICATION OF WHITE STALLION ENERGY CENTER, LLC FOR AIR QUALITY PERMIT NOS. 86088, HAP28, PAL26, AND PSD-TX-1160	§ § § § §	**BEFORE THE TEXAS COMMISSION** **ON** **ENVIRONMENTAL QUALITY**

REQUEST FOR COMMISSION AND SUBPOENA REQUIRING THE ORAL DEPOSITION OF CORPORATE REPRESENTATIVE OF STANLEY CONSULTANTS, INC.

TO BRIDGET C. BOHAC, CHIEF CLERK, TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Comes now, Environmental Defense Fund, Inc. ("EDF"), protestant in the above-captioned proceeding, and, pursuant to Texas Government Code Sections 2001.089 and 2001.094, requests that the Texas Commission on Environmental Quality ("TCEQ") issue:

1. A COMMISSION, in the form attached hereto,

a. Requiring the taking of the deposition of Corporate Representative of Stanley Consultants, Inc. ("Stanley") with knowledge of (a) communications to, with and from White Stallion Energy Center, LLC ("WSEC"), or any of WSEC's agents, representatives, or consultants, regarding the preparation of Site Plan 4, including knowledge regarding the timing of WSEC's instructions or directions to prepare Site Plan 4 and (b) the preparation and design of Site Plan 4, including the location of emissions points at

10:00 A.M. ON WEDNESDAY, MARCH 14, 2012
MCELROY, SULLIVAN & MILLER, LLP
1201 SPYGLASS DRIVE, SUITE 200
AUSTIN, TX 78746, AND

b. Requiring an officer to whom the commission is addressed to:

(1) examine Corporate Representative of Stanley before the officer on the date and at the place named in the commission; and

(2) take answers under oath to questions asked Corporate Representative of Stanley by EDF, a party to the proceeding, TCEQ, or an attorney for EDF, a party or the agency; and

c. Requiring Corporate Representative of Stanley to remain in attendance from day to day until the deposition is begun and completed.

2. A SUBPOENA, in the form attached hereto, requiring Corporate Representative of Stanley to appear for his deposition as described above and to produce, at the time the deposition is taken, all books, records, papers, emails, facsimiles, text messages, communications, documents or other objects in the possession, custody or control of Corporate Representative of Stanley referring or related to (1) the design or preparation of Site Plan 4, including the location of emission points; (2) the timing of the decision to design or prepare Site Plan 4; (3) the calculation or determination of emission rates related to Site Plan 4; and (4) any dispersion modeling or analysis of the emission impacts related to Site Plan 4, including all modeling input and output files.

The undersigned attorney for EDF has unsuccessfully attempted to secure the voluntary production of documents and appearance of Corporate Representative of Stanley for a deposition. WSEC retained Stanley to assist with the permitting of the proposed power plant in Matagorda County, Texas. The undersigned contacted counsel for WSEC via email on the afternoon of Friday, February 24th to request his cooperation in scheduling depositions. *See* Attachment A. Counsel for WSEC responded by email that "discovery closed February 1, 2010." *See* Attachment B. Since that email response, WSEC has not cooperated with scheduling depositions or the production of documents. The District Court ordered remand "for the taking of additional evidence on the October 25, 2010 site plan submitted by WSEC to the U.S. Army Corps of Engineers ("Site Plan 4") and on its impacts on WSEC's TCEQ air permit application. In order to present evidence as to Site Plan 4 and the "impacts" associated with Site Plan 4, EDF needs to conduct some discovery. TCEQ has provided less than 30 days under the deadline for briefing and accompanying evidence to conduct discovery. Therefore, because WSEC will not voluntarily cooperate with discovery and because of the March 22, 2012 evidentiary briefing

deadline, good cause exists for the requested commission and subpoena. Unless the requested commission and subpoena are issued, EDF's due process rights will be violated.

Because the location of the deposition is to be taken is within 25 miles of the offices of Stanley and because the residence of Corporate Representative of Stanley is unknown at this time, the maximum witness fee that Corporate Representative of Stanley may be entitled to receive pursuant to Texas Government Code Section 2001.103(a) is One Hundred Seventy Nine Dollars ($179.00), the amount of the attached check payable to the Texas Commission on Environmental Quality as a deposit for such witness fee.

EDF respectfully requests that the TCEQ issue the requested commission and subpoena, and that EDF be granted such other relief to which it may be entitled.

Respectfully submitted,

McELROY, SULLIVAN & MILLER, L.L.P.
Thomas M. Weber
Texas Bar No. 00794828
Paul R. Tough
Texas Bar No. 24051440
P.O. Box 12127
Austin, Texas 78711
1201 Spyglass, Suite 200
Austin, Texas 78746
Tel. (512) 327-8111
Fax (512) 327-6566

ATTORNEYS FOR ENVIRONMENTAL DEFENSE FUND, INC.

By: _____
Thomas M. Weber

CERTIFICATE OF SERVICE

On March 2, 2012 a true and correct copy of the foregoing Request for Commission and Subpoena Requiring the Oral Deposition of Corporate Representative of Stanley was served by certified mail, return receipt requested, hand delivery and/or email on all counsel of record:

for

Thomas M. Weber

SERVICE LIST

Nancy Olinger, Assistant Attorney General
Cynthia Woelk, Assistant Attorney General
Office of the General Counsel
Environmental Protection Section
P.O. Box 12548, Capitol Station (MC-018)
Austin, Texas 78711-2548
512/463-2012 FAX 512/320-0052

Gabriel Clark Leach
Ilan Levin
Environmental Integrity Project
1303 San Antonio St., Suite 200
Austin, Texas 78701
512/637-9477 FAX 512/584-8019

Eric Groten
Paulina Williams
Vinson & Elkins
2801 Via Fortuna, Suite 100
Austin, Texas 78746-7568
512/542-8400 FAX 512/542-8612

Stephanie Bergeron Perdue
Booker Harrison
TCEQ Legal Division MC 218
P.O. Box 13087
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Scott Humphrey
TCEQ Office of Public Interest Counsel
MC 103
P.O. Box 13087
Austin, Texas 78711-3087
512/239-6363 FAX 512/239-6377

Docket Clerk
TCEQ Office of the Chief Clerk MC 105
P.O. Box 13087
Austin, Texas 78711-3087
512/239-3300 FAX 512/239-3311

From: Tom Weber
Sent: Friday, February 24, 2012 3:40 PM
To: Eric Groten
Cc: booharri@tceq.state.tx.us; Nancy Olinger; Cynthia Woelk; Ilan Levin; Paul Tough; Gabriel Clark-Leach; Schenkkan, Pete; Mason, Thomas G.; Scott Humphrey
Subject: White Stallion

Eric,

Presumably you are in receipt of General Counsel Trobman's February 23, 2012, letter stating that "Briefs with accompanying evidence, as authorized by the Court's June 20, 2011 order, must be filed with the Office of the Chief Clerk no later than 5:00 pm on Thursday, March 22, 2012." As you will recall, Judge Livingston's Remand Order orders the "taking of additional evidence on the October 25, 2010 site plan submitted by WSEC to the U.S. Army Corps of Engineers ("Site Plan 4") and on its impacts on WSEC's TCEQ air permit application under applicable law."

In order to present evidence as to Site Plan 4 and the "impacts" associated with Site Plan 4, EDF needs to conduct some discovery. Less than 30 days has been provided under the deadline for briefing and presentation of evidence set out in General Counsel Trobman's letter. Therefore, I am contacting you to request your cooperation in scheduling depositions for the week of March 5th and/or March 12th and with regard to the production of documents prior to those depositions.

I would like to take the depositions of the following persons and entities: (1) Frank Rotondi, (2) pursuant to TRCP 199.2 (b)(1), a corporate designee or the corporate designees of WSEC with knowledge of the decision to, and timing of the decision to, prepare Site Plan 4, file Site Plan 4 with the U.S. Army Corps of Engineers, and with knowledge of any dispersion modeling performed with regards to Site Plan 4, (3) pursuant to TRCP 199.2 (b)(1), a corporate designee or the corporate designees of Stanley Consultants, Inc. with knowledge of (a) communications to, with and from WSEC, or any of WSEC's agents, representatives, or consultants, regarding the preparation of Site Plan 4 including knowledge regarding the timing of WSEC's instructions to prepare Site Plan 4 and (b) the preparation and design of Site Plan 4 including the location of emissions points, and (4) pursuant to TRCP 199.2 (b)(1), a corporate designee or the corporate designees of RPS regarding any air dispersion modeling performed with regard to Site Plan 4, if any. If you are willing to cooperate in producing these witnesses, I will prepare a request for production of documents for your review and comment.

If WSEC takes the position that either of (3) or (4) is not subject to the control of WSEC, please advise. Also, please advise the undersigned by noon on Tuesday February 29th whether your client will or will not make any or all of the witnesses available, so that I can take appropriate steps.

Thanks, Tom.

Thomas M. Weber
McElroy, Sullivan & Miller, L.L.P.
P.O. Box 12127
Austin, Tx. 78711
(512) 327-8111
(512) 327-6566 (fax)
tweber@msmtx.com
www.msmtx.com

Attachment A

From: Groten, Eric [mailto:egroten@velaw.com]
Sent: Friday, February 24, 2012 4:54 PM
To: Tom Weber
Cc: 'BOOHARRI@tceq.state.tx.us'; 'nancy.olinger@oag.state.tx.us'; 'cynthia.woelk@oag.state.tx.us'; 'ilevin@environmentalintegrity.org'; Paul Tough; 'gclark-leach@environmentalintegrity.org'; Schenkkan, Pete; 'TMason@gdhm.com'; 'SHUMPHRE@tceq.state.tx.us'
Subject: Re: White Stallion

Discovery closed February 1, 2010.

From: Tom Weber [mailto:tweber@msmtx.com]
Sent: Friday, February 24, 2012 03:40 PM
To: Groten, Eric
Cc: booharri@tceq.state.tx.us <booharri@tceq.state.tx.us>; Nancy Olinger <Nancy.Olinger@oag.state.tx.us>; Cynthia Woelk <Cynthia.Woelk@oag.state.tx.us>; Ilan Levin <ilevin@environmentalintegrity.org>; Paul Tough <ptough@msmtx.com>; Gabriel Clark-Leach <gclark-leach@environmentalintegrity.org>; Schenkkan, Pete; Mason, Thomas G. <TMason@gdhm.com>; Scott Humphrey <SHUMPHRE@tceq.state.tx.us>
Subject: White Stallion

Eric,

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In order to present evidence as to Site Plan 4 and the "impacts" associated with Site Plan 4, EDF needs to conduct some discovery. Less than 30 days has been provided under the deadline for briefing and presentation of evidence set out in General Counsel Trobman's letter. Therefore, I am contacting you to request your cooperation in scheduling depositions for the week of March 5th and/or March 12th and with regard to the production of documents prior to those depositions..

I would like to take the depositions of the following persons and entities: (1) Frank Rotondi, (2) pursuant to TRCP 199.2 (b)(1), a corporate designee or the corporate designees of WSEC with knowledge of the decision to, and timing of the decision to, prepare Site Plan 4, file Site Plan 4 with the U.S. Army Corps of Engineers, and with knowledge of any dispersion modeling performed with regards to Site Plan 4, (3) pursuant to TRCP 199.2 (b)(1), a corporate designee or the corporate designees of Stanley Consultants, Inc. with knowledge of (a) communications to, with and from WSEC, or any of WSEC's agents, representatives, or consultants, regarding the preparation of Site Plan 4 including knowledge regarding the timing of WSEC's instructions to prepare Site Plan 4 and (b) the preparation and design of Site Plan 4 including the location of emissions points, and (4) pursuant to TRCP 199.2 (b)(1), a corporate designee or the corporate designees of RPS regarding any air dispersion modeling performed with regard to Site Plan 4, if any. If you are willing to

Attachment B

cooperate in producing these witnesses, I will prepare a request for production of documents for your review and comment.

If WSEC takes the position that either of (3) or (4) is not subject to the control of WSEC, please advise. Also, please advise the undersigned by noon on Tuesday February 29th whether your client will or will not make any or all of the witnesses available, so that I can take appropriate steps.

Thanks, Tom.

Thomas M. Weber
McElroy, Sullivan & Miller, L.L.P.
P.O. Box 12127
Austin, Tx. 78711
(512) 327-8111
(512) 327-6566 (fax)
tweber@msmtx.com
www.msmtx.com

McELROY, SULLIVAN & MILLER, LLP
PETTY CASH ACCOUNT
P.O. BOX 12127
AUSTIN, TX 78711-2127

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30-9/1140
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DATE 3/2/12

PAY TO THE ORDER OF TCEQ $ 179.00

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FOR Witness deposition fee: Stanley

Patricia J. Brees MP

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
TCEQ Docket No. 2009-0283-AIR
SOAH Docket No. 582-09-3008

APPLICATION OF WHITE STALLION ENERGY CENTER, LLC FOR AIR QUALITY PERMIT NOS. 86088, HAP28, PAL26, AND PSD-TX-1160	§ § § § §	**BEFORE THE TEXAS COMMISSION** **ON** **ENVIRONMENTAL QUALITY**

COMMISSION TO TAKE THE ORAL DEPOSITION OF CORPORATE REPRESENTATIVE OF STANLEY CONSULTANTS, INC.

TO THE OFFICERS AUTHORIZED BY STATUTE TO TAKE A DEPOSITION:

You are hereby required to take the deposition of:

Corporate Representative of Stanley Consultants, Inc.
6836 Austin Center Boulevard, Suite 350
Austin, TX 78731

with knowledge of (a) communications to, with and from White Stallion Energy Center, LLC ("WSEC"), or any of WSEC's agents, representatives, or consultants, regarding the preparation of Site Plan 4, including knowledge regarding the timing of WSEC's instructions or directions to prepare Site Plan 4 and (b) the preparation and design of Site Plan 4, including the location of emissions points at the following time and place:

10:00 A.M. ON WEDNESDAY, MARCH 14, 2012
MCELROY, SULLIVAN & MILLER, LLP
1201 SPYGLASS DRIVE, SUITE 200
AUSTIN, TX 78746

You are further hereby required to:

(1) examine the witness, Corporate Representative of Stanley Consultants, Inc. ("Stanley"), before you on the date and at the place named above; and

(2) take answers under oath to questions asked the witness, Corporate Representative of Stanley, by EDF, a party to the proceeding, the state agency, or an attorney for EDF, a party or the agency.

This commission authorizes the issuance of any subpoena necessary to require that the witness, Corporate Representative of Stanley, appear and produce, at the time the deposition is taken, books, records, papers, emails, facsimiles, text messages, communications, documents or other objects that may be necessary and proper for the purpose of the proceeding, and requires the witness, Corporate Representative of Stanley, to remain in attendance from day to day until the deposition is begun and completed.

Issued at Austin, Texas on this the ____day of_____, 2012.

_____
Texas Commission on Environmental Quality

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
TCEQ Docket No. 2009-0283-AIR
SOAH Docket No. 582-09-3008

APPLICATION OF WHITE STALLION ENERGY CENTER, LLC FOR AIR QUALITY PERMIT NOS. 86088, HAP28, PAL26, AND PSD-TX-1160	§ § § § §	**BEFORE THE TEXAS COMMISSION** **ON** **ENVIRONMENTAL QUALITY**

SUBPOENA FOR THE ORAL DEPOSITION OF
CORPORATE REPRESENTATIVE OF STANLEY CONSULTANTS, INC.

TO ANY SHERIFF OR CONSTABLE OF THE STATE OF TEXAS:

This subpoena is to be served on the following person, who has been summoned to appear as a witness at the insistence of Environmental Defense Fund, Inc.:

Corporate Representative of Stanley Consultants, Inc.
6836 Austin Center Boulevard, Suite 350
Austin, TX 78731

CORPORATE REPRESENTATIVE OF STANLEY CONSULTANTS, INC., YOU ARE COMMANDED to appear and give testimony, as a witness in the above-styled proceeding now pending before the Texas Commission on Environmental Quality, at a deposition at the following time and place:

10:00 A.M. ON WEDNESDAY, MARCH 14, 2012
MCELROY, SULLIVAN & MILLER, LLP
1201 SPYGLASS DRIVE, SUITE 200
AUSTIN, TX 78746

YOU ARE FURTHER COMMANDED to produce, at the time the deposition is taken, and to permit the inspection and copying of, all books, records, papers, emails, facsimiles, text messages, communications, documents or other objects in the possession, custody or control of Stanley Consultants, Inc. referring or related to (1) the design or preparation of White Stallion Energy Center LLC's Site Plan 4, including the location of emission points; (2) the timing of the decision to design or prepare Site Plan 4; (3) the calculation or determination of emission rates related to Site Plan 4; and (4) any dispersion modeling or analysis of the emission impacts related to Site Plan 4, including all modeling input and output files.

Issued at Austin, Texas on this the ____ day of _____, 2012.

_____
Texas Commission on Environmental Quality

RETURN OF SUBPOENA

I certify that I served this Subpoena by delivering a true and correct copy to Corporate Representative of Stanley Consultants, Inc. at _____ o'clock __.m. on _____, ___, 2012.

_____

Signature

_____

Typed or Printed Name

Attachment 3

CAUSE NO. D-1-GN-11-000011

ENVIRONMENTAL DEFENSE FUND, INC.,	§	**IN THE DISTRICT COURT OF**
PLAINTIFF	§	
	§	
VS.	§	**TRAVIS COUNTY, TEXAS**
	§	
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,	§	
	§	
DEFENDANT	§	**261st JUDICIAL DISTRICT**

EDF'S MOTION FOR REMAND UNDER APA §2001.75(c)

Environmental Defense Fund, Inc. ("EDF") appeals a Final Order issued by the Texas Commission on Environmental Quality ("TCEQ") granting air quality permits to applicant White Stallion Energy Center, L.L.C. ("White Stallion") for construction of a 1,320 megawatt coal and petroleum coke-fired power plant. The Final Order hinged on air dispersion modeling and testimony on whether pollutant emissions from the proposed plant will comply with federal and state air quality requirements.

The modeling presented at hearing by the parties was based upon a specific site plan ("Air Permit Site Plan") that White Stallion's CEO testified was ***the*** site plan that White Stallion actually intended to build. However, ***six days*** after TCEQ issued its Final Order, White Stallion prepared and ultimately filed a new and ***different*** site plan for the same power plant in support of a permit application submitted to the U.S. Army Corps of Engineers ("the Corps"). This new site plan changes the location of 73 of the 84 pollutant emissions points used in the air dispersion modeling upon which the Final Order was based.

EDF is entitled to notice and an opportunity for a hearing on the plant White Stallion ***actually intends to build***. EDF respectfully requests that the Court remand this case under APA §2001.175(c) to allow discovery on the new site plan and for the presentation of additional evidence, including new modeling, in a contested case proceeding before SOAH.

I.
BACKGROUND

1. The proposed power plant will be located along the Colorado River on an approximately 1,200-acre tract, about eight (8) miles south of Bay City, in Matagorda County, Texas, in an ecologically sensitive area known as the Columbia Bottomlands.

2. White Stallion is required to obtain federal and state air quality permits from the TCEQ prior to building its power plant.[1] TCEQ's authority to issue the federal permits at issue in this case arises under a delegation of authority from the U.S. Environmental Protection Agency ("EPA") under the federal Clean Air Act.

3. In September 2008, White Stallion filed an application for federal and state air quality permits which included a site plan showing the location of various facilities and equipment that will be sources of air pollutant emissions. Randy Bird, White Stallion's Chief Operating Officer, signed the application and certified subject to criminal penalty that the "facts included in the application" including the Air Permit Site Plan were "true and correct." Exhibit A, Attachment 2. In December 2008 and again in February 2009, White Stallion supplemented its application with an "Air Quality Modeling Analysis" which analyzed air quality impacts as required under 40 CFR §52.21(k), an EPA rule incorporated into TCEQ's air quality rules.[2] Exhibit A, Attachment 3.

---

[1] This is an administrative appeal of TCEQ's October 19, 2010, Final Order in Docket No. 2009-0283-AIR approving White Stallion's applications for State Air Quality Permit 86088, Federal Prevention of Significant Deterioration ("PSD") Permit PSD-TX-1160, Hazardous Air Pollutant ("HAP") Permit HAP-28, and Plantwide Applicability Limit ("PAL") Permit PAL-26 (collectively the "Application"). Exhibit A, Attachment 1.

[2] See 30 TAC § 116.160(c)(2)(B).

4. The air quality impacts analysis required under 40 CFR §52.21(k) is ***the*** core demonstration that an applicant must make to be entitled to an air permit.[3] White Stallion's air quality impacts analysis and supporting modeling were based only on the now outdated Air Permit Site Plan. Exhibit A, Attachment 3 at White Stallion Exhibit 103, p. 15 of 515..

5. In February 2010, two Administrative Law Judges ("ALJs") from the State Office of Administrative Hearings ("SOAH") conducted an evidentiary hearing on White Stallion's air permit application.

6. At the outset of the hearing, EDF introduced evidence showing that White Stallion's sworn and certified application for a wastewater discharge permit, filed with the TCEQ's Water Quality Division in February 2009, and its sworn application for a wetlands permit, filed with the Corps in September 2009, included site plans that were different from White Stallion's September 2008 Air Permit Site Plan, even though all three plans were for the same power plant. Exhibit B, pp. 11-12. When the site plans submitted to the Water Quality Division and the Corps were compared to the Air Permit Site Plan, the evidence showed that more than 20 emissions points were at different locations. Exhibit C, pp. 148-154.

7. Despite the fact that these subsequently filed site plans conflicted with the Air Permit Site Plan, Frank Rotondi, White Stallion's CEO, testified on cross examination:

> It is my testimony that we have submitted a site plan in the air application for this project to which we are fully and completely prepared to build this project in every respect.

---

[3] In conducting this analysis, White Stallion ran an air dispersion model called AERMOD which predicts ambient air quality impacts of various regulated air contaminants (including carbon monoxide (CO), nitrogen dioxide (NO_2), sulfur dioxide (SO_2), and particulate matter (PM)) for purposes of attempting to demonstrate compliance with the applicable National Ambient Air Quality Standards ("NAAQS") and Prevention of Significant Deterioration ("PSD") increment standards as required under the federal Clean Air Act and TCEQ rules.

Exhibit B, p. 12; Exhibit C, p. 77. Mr. Rotondi further testified that the only site plan that had been approved by White Stallion's so-called "development committee" was the Air Permit Site Plan.[4] Exhibit B, p.12; Exhibit C, p. 88-90.

8. EDF also introduced e-mails dated January 2009 among White Stallion's consultants and management that discussed further revisions to the site plan to minimize impacts to wetlands. Exhibit A, Attachment 4. These e-mails, exchanged more than a year before the hearing on the merits in the air permit case, acknowledged that these changes "may affect the wastewater permit and the air dispersion modeling."[5] *Id.*

9. Based on this evidence, EDF moved to dismiss or alternatively remand White Stallion's application to TCEQ pursuant to Section 382.0291(d) of the Texas Health & Safety Code. Exhibit C, pp. 6-9. Section 382.0291(d) provides:

> (d) An applicant for a license, permit, registration, or similar form of permission required by law to be obtained from the commission **may not amend the application after the 31st day before the date on which a public hearing on the application is scheduled to begin. If an amendment of an application would be necessary within that period, the applicant shall resubmit the application to the commission and must again comply with notice requirements and any other requirements of law** or commission rule as though the application were originally submitted to the commission on that date.

Tex. Health & Safety Code Ann. § 382.0291(d). EDF argued that White Stallion's subsequent site plans, filed under sworn certification and subject to criminal penalty, constituted an

---

[4] Both Mr. Rotondi and Mr. Bird (who signed both of the sworn and certified applications filed with TCEQ's Water Quality and Air Permit Divisions respectively) are on White Stallion's "development committee." Exhibit B, p. 12.

[5] The following persons were included in this email chain: White Stallion CEO Frank Rotondi who testified at the air permit hearing in support of the application; Larry Shell, Vice President & Sr. Project Manager for Stanley Consultants, Inc. (the firm that designed and engineered the proposed plant) who testified as an expert in support of the Application; Joe Kupper, air dispersion modeler with the RPS Group who testified as an expert at the hearing in support of the Application; Shanon DiSorbo, consultant with RPS Group who testified as an expert at hearing in support of the Application; and Scott Jecker, wetlands consultant who prepared White Stallion's wetlands application filed with the Corps. Exhibit A, Attachment 4.

amendment to the Air Permit Site Plan or showed that an "amendment to the application would be necessary." EDF further argued that EDF and the public were entitled to notice, comment, and an opportunity for hearing on the power plant that White Stallion actually intends to build.

10. The ALJs denied EDF's motion. In doing so, the ALJs expressed concern with White Stallion's changing site plans, but expressly relied on White Stallion's CEO's sworn testimony that White Stallion was "fully willing to comply in every respect with construction of this project according to [the air permit] site layout." Exhibit C, pp. 77-78. The ALJs reasoned:

> Mr. Rotondi testified that WSEC intended to build the facility as stated in this application. Although we were concerned about WSEC's actions in filing other site plans, we concluded that those actions did not change the facts that led the Commission to refer this case to SOAH. **If WSEC intended to build the proposed facility as shown in the site plan in this application, then Protestants' concerns did not rise to the level of a legal basis for continuing the hearing**.

Exhibit B, p. 13-14.

11. After a full, six-day evidentiary hearing, the ALJs recommended that TCEQ deny White Stallion's application on other grounds. Nevertheless, on October 19, 2010, TCEQ issued the Final Order granting White Stallion's air permit application. Exhibit A, Attachment 1. On November 10, 2010, EDF filed its motion for rehearing.

12. On December 2, 2010, EDF received documents in response to a Freedom of Information Act ("FOIA") request filed with the Corps. See Exhibit A, Attachment 6. These documents showed that, on or about October 25, 2010, within *six days* after the TCEQ signed the Final Order, White Stallion revised its wetlands permit site plan. *Id.* This revised site plan (the October 2010 Site Plan), filed with the Corps in November 2010, is materially different from the Air Permit Site Plan. Exhibit D, ¶ 7. The new site plan moves 73 of the 84 emissions points

modeled by White Stallion in the air permit proceeding. *Id.* Sixty-four (64) of the 73 relocated emissions points moved 100 meters or more and at least two moved more than 750 meters. *Id.*

13. On December 6, 2010, EDF filed with TCEQ a motion to reopen the record, extend the time for filing a supplemental motion for review, and extend the time for motions for rehearing. The TCEQ did not rule on these motions, and EDF's motion for rehearing was overruled by operation of law.

III.

ARGUMENT & AUTHORITY

14. The Administrative Procedure Act provides that "[a] party may apply to the court to present additional evidence." TEX. GOV'T CODE § 2001.175(c). It further provides:

> If the court is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the state agency, the court may order that the additional evidence be taken before the agency on conditions determined by the court. The agency may change its findings and decision by reason of the additional evidence and shall file the additional evidence and any changes, new findings, or decisions with the reviewing court.

TEX. GOV'T CODE § 2001.175(c).

15. Pursuant to this statute, the reviewing court may remand a proceeding to an administrative agency where two showings are made: (1) the new evidence is material; and (2) there was good reason for failure to present that evidence in the proceeding before the agency. *Independence Sav. & Loan Ass'n v. Gonzales County Sav. & Loan Ass'n*, 568 S.W.2d 463, 465 (Tex. Civ. App.—Austin 1978, writ ref'd n.r.e.).

A. The Changes to the Site Plan Are Material.

16. The changes to White Stallion's site plan as evidenced by its new October 2010 Site Plan are material for multiple reasons.

17. First, the location of emission sources is material to determining the air quality impacts associated with the proposed plant as required under 40 CFR § 52.21(k) and TCEQ rules 30 TAC § 116.160. Exhibit D, ¶ 4. The location of each emission source, the type and rate of emissions from those sources, and historic meteorological data are the basic inputs to the air dispersion model that the Applicant must use to demonstrate compliance with requirements under the CAA and TCEQ's rules. *Id.* Changes in the location of emissions points likely results in changes to the model output (i.e. the predicted air quality impacts of the various pollutants emitted from the proposed plant). *Id.* Applicant's own dispersion modeling offered at hearing showed that emissions impacts from the power plant were predicted to be within 2 micrograms per cubic meter ($\mu g/m^3$) of the 30 $\mu g/m^3$ short-term Prevention of Significant Deterioration ("PSD") increment standard for particulate matter with a diameter of 10 microns or less ("PM_{10}"). *Id.* at ¶ 5. All 73 of the emissions points that are at different locations under the new site plan are sources of PM_{10}. *Id.* at ¶ 8. Wholesale changes to the location of emissions sources are clearly material to the issue of whether White Stallion can demonstrate compliance with the applicable standards for the plant it actually intends to build.

18. Second, evidence regarding the new site plan is material to whether the parties have been afforded due process. The parties are entitled to notice and an opportunity for a hearing on the application for the plant White Stallion actually intends to build.[6] EDF is entitled

[6] TCEQ's own rules require that the Applicant present its actual plans as part of its application. 30 TAC § 116.111(a)(2)(I) requires that the Applicant file an application containing information demonstrating that the "proposed facility" will comply "with all applicable requirements in this chapter concerning PSD review." 30 TAC § 116.111(a)(2)(I).

to analyze and conduct discovery on the actual site plan, to conduct its own dispersion modeling based on the actual site plan, to present that modeling at hearing, and to cross examine White Stallion regarding the actual site plan.

19. Finally, the fact that White Stallion changed its site plan just six days after the TCEQ issued its Final Order is material to the determination of whether White Stallion complied with Section 382.0291(d) of the Texas Health & Safety Code, which requires an applicant to formally resubmit and issue new notice of amendments to its application when those amendments are made (or should have been made) less than 31 days before hearing. Changes in power plant site plans do not occur overnight. The timing of White Stallion filing its new site plan with the Corps, and the January 2009 emails discussing the possible impacts on the dispersion modeling that might result from a changed site plan, suggest that White Stallion made the decision to change the site plan well before TCEQ issued the Final Order. EDF is entitled to conduct discovery on the issue of when that decision was made, whether White Stallion's hearing testimony was truthful, and whether White Stallion intentionally delayed filing the new site plan to avoid the consequences of § 382.0291(d).

B. Evidence of the New Site Plan Was Not Presented at Hearing Because EDF Only Learned of the New Site Plan After Issuance of the Final Order.

20. White Stallion's new October 2010 Site Plan was not presented into evidence because EDF did not obtain copies of this plan from the Corps until December 2, 2010 even though EDF filed its first FOIA request in July 2010. Exhibit A, Attachments 5, 6. The new site plan itself is dated October 25, 2010 – only six days after TCEQ's Final Order. Given this timing, it is entirely possible (and indeed, likely) that White Stallion had prior knowledge that it intended to change the site plan and simply did not inform TCEQ, the ALJs or EDF.

C. Proposed Conditions of Remand.

21. APA Section 2001.175(c) provides that the court "may order that the additional evidence be taken on conditions determined by the court."

22. As stated above, Texas Health & Safety Code § 382.0291(d) provides that, an applicant may not amend its application after the 31st day on which a public hearing on an air permit is scheduled to begin unless it re-submits its application and complies with the applicable notice and other requirements.

23. EDF respectfully requests that the Court remand this matter in accordance with Texas Natural Resources Code §382.0291(d) and require that the Applicant re-submit its Application and comply with the applicable notice and other requirements of that statute in light of the pervasive changes to White Stallion's site plan. Alternatively, EDF respectfully requests that the Court remand this case for consideration of the new site plan, that EDF be allowed to conduct additional discovery on the new site plan, and that a hearing be convened and conducted by SOAH regarding the new site plan, related emissions impacts, and such other questions of fact and law as applicable law requires.

IV.

CONCLUSION AND PRAYER

EDF is entitled to hearing on the site plan that White Stallion actually intends to build. Anything short of that denies EDF its due process rights. Therefore, the Court should remand this matter to TCEQ under the conditions discussed above.

WHEREFORE PREMISES CONSIDERED, Plaintiff Environmental Defense Fund, Inc. respectfully requests that this Court remand this case to TCEQ for further proceedings in accordance with Texas Government Code § 2001.175(c) and that Applicant be required to re-

file its Application pursuant to Texas Health and Safety Code § 382.0291(d). Alternatively, EDF respectfully requests that the Court remand this case for consideration of the additional evidence, that EDF be allowed to conduct additional discovery on the new site plan, and that a hearing be convened and conducted by SOAH regarding the new site plan, related emissions impacts, and such other questions of fact and law as applicable law requires.

Respectfully submitted,

By: _____

Thomas M. Weber
State Bar No. 00794828
Paul R. Tough
State Bar No. 24051440
McElroy, Sullivan & Miller, LLP
P.O. Box 12127
Austin, Texas 78711
1201 Spyglass, Ste 200
Austin, Texas 78746
(512) 327-8111
(512) 327-6566 FAX

Pete M. Schenkkan
State Bar No. 17741500
Helen Currie Foster
State Bar No. 24008379
Robin A. Melvin
State Bar No. 13929590
Graves, Dougherty, Hearon & Moody,
A Professional Corporation
401 Congress Avenue, Suite 2200
Austin, TX 78701
(512) 480-5600 Telephone
(512) 480-5888 Telecopier

CERTIFICATE OF SERVICE

I certify that on March 4th, 2011, the foregoing document was served by hand-delivery, certified mail, return receipt requested, on all counsel of record:

Nancy Olinger
Brian E. Berwick
Cynthia Woelk
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Eric Groten
Patrick W. Lee
Vinson & Elkins
2801 Via Fortuna, Suite 100
Austin, TX 78746

Representing: White Stallion Energy Center, LLC

Ilan Levin
Gabriel Clark-Leach
Environmental Integrity Project
1303 San Antonio Street
Suite 200
Austin, TX 78701

Representing: Sierra Club No Coal Coalition

Thomas M. Weber

AFFIDAVIT OF THOMAS M. WEBER

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, upon this day personally appeared Thomas M. Weber, a person whose identity has been verified by me, who, upon the administration of an oath, stated and deposed as follows:

1. "My name is Thomas M. Weber. I am over the age of 21, of a sound mind, and competent in all respects to make this affidavit. I have personal knowledge of all of the facts stated herein, and all of such facts are true and correct.

2. I am counsel for record for Environmental Defense Fund, Inc. ("EDF") in TCEQ Docket No. 2009-0283-AIR, the Application of White Stallion Energy Center, L.L.C. for Air Quality Permit Nos. 86088, PSD-TX-1160, HAP-28, and PAL-26 (the "TCEQ Proceeding") relating to construction of a proposed power plant in Matagorda County, Texas.

3. Attached hereto as Attachment 1 are true and correct copies of excerpts from the Final Order in the TCEQ Proceeding issued by the TCEQ on October 19, 2010.

4. Attached hereto as Attachment 2 are true and correct copies of excerpts from the Application filed by Applicant White Stallion Energy Center, L.L.C. ("White Stallion") in the TCEQ Proceeding.

5. Attached hereto as Attachment 3 are true and correct copies of excerpts from the Air Quality Modeling Analysis performed by White Stallion in the TCEQ Proceeding. Attachment 3 consists of portions of White Stallion Exhibits 103 and 109 submitted by White Stallion as evidence in the TCEQ Proceeding and admitted into evidence in that proceeding in the hearing conducted at the State Office of Administrative Hearings ("SOAH").

6. Attached hereto as Attachment 4 are true and correct copies of emails produced by White Stallion to EDF in the course of the TCEQ Proceeding.

7. Attached hereto as Attachment 5 are true and correct copies of Freedom of Information Act ("FOIA") requests sent by me on behalf of EDF to the United States Army Corps of Engineers ("Corps") concerning permit applications filed by White Stallion with the Corps relating to the same proposed power plant that is the subject of the TCEQ Proceeding.

8. Attached hereto as Attachment 6 are true and correct copies of documents received by my office from the Corps in response to EDF's FOIA requests in Attachment 5.

Exhibit A

Further affiant sayeth not."

Thomas M. Weber

SUBSCRIBED AND SWORN to before me, the undersigned notary, on this the 14th day of March, 2011, to which witness my hand and official seal.

JEANA MATETZSCHK
Notary Public, State of Texas
My Commission Expires
JULY 25, 2012

Notary Public, State of Texas

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

On September 29, 2010, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of White Stallion Energy Center LLC for Air Quality Permit Nos. 86088, HAP28, PAL26, and PSD-TX-1160. A Proposal for Decision (PFD) was presented by Paul Keeper and Kerrie Jo Qualtrough, Administrative Law Judges (ALJs) with the State Office of Administrative Hearings (SOAH), who conducted a contested case hearing in this case from February 10 through 18, 2010, in Austin, Texas.

After considering the ALJs' PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

Proposed Facility

1. On September 5, 2008, White Stallion Energy Center, LLC (WSEC) filed an application with the Texas Commission on Environmental Quality (TCEQ or Commission) for a permit (Permit) to construct and operate a new 1,200 net megawatt (MW) electric generation plant in Matagorda County, Texas.
2. There are no schools located within 3,000 feet of the proposed WSEC site.
3. WSEC proposes to construct and operate a new steam-electric utility generating facility using four circulating fluidized bed (CFB) boilers. A CFB boiler relies on high pressure air to improve combustion as the fuel moves across a surface of limestone.

2. The ED's Response to Comments concerning WSEC's Air Permit Nos. 86088, HAP28, PAL26, and PSD-TX-1160 is adopted and approved. If there is any conflict between the Commission's Order and the ED's Response to Comments, the Commission's Order prevails.

3. EDF and SC/NCC are each required to reimburse WSEC for one-third of the total invoice, or $2,509.91 each.

4. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and TEX. GOV'T CODE § 2001.144.

5. The Chief Clerk of the Commission shall forward a copy of this Order to all parties and issue the attached permit as changed to conform to this Order.

6 All other motions, requests for specific Findings of Fact or Conclusions of Law, and other requests for general and specific relief, if not expressly granted, are denied for want of merit.

7. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of this Order.

ISSUED: OCT 19 2010

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw

Bryan W. Shaw, Ph.D., Chairman
For the Commission

404 Camp Craft Rd., Austin, TX 78746
Tel: (512) 347 7588 Fax: (512) 347 8243
Internet: www.rpsgroup.com/energy

Application for Texas Commission on Environmental Quality New Source Review Air Quality Permit

White Stallion Energy Center, LLC
Bay City, Matagorda County, Texas

September 5, 2008

STATE OF TEXAS
SHANON G. DISORBO
97020
LICENSED
PROFESSIONAL ENGINEER

United Kingdom Australia USA Canada Ireland Netherlands Malaysia

XII. COPIES OF THIS APPLICATION *(continued)*	
C. Is a copy of the Core Data Form, the Form PI-1, and all attachments being sent to the appropriate TCEQ regional office	☒ YES ☐ NO
D. Is a copy of the Core Data Form, the Form PI-1, and all attachments being sent to each appropriate local air pollution control program(s)?	☒ YES ☐ NO
List all local air pollution control program(s): **Not Applicable**	
E. Is a copy of the Core Data Form, Form PI-1, and all attachments (without confidential information) being sent to the EPA Region 6 office in Dallas, Texas? (federal applications only)	☒ YES ☐ NO
F. This facility is located within 100 kilometers of the Rio Grande River and a copy of the application was sent to the International Boundary Water Commission (IBWC):	☐ YES ☒ NO
G. This facility is located within 100 kilometers of a federally-designated Class I area and a copy of the application was sent to the appropriate Federal Land Manager:	☐ YES ☒ NO
XIII. PROFESSIONAL ENGINEER (P.E.) SEAL	
Is the estimated capital cost of the project greater than $2 million dollars? If "YES," the application must be submitted under the seal of a Texas licensed Professional Engineer (P.E.).	☒ YES ☐ NO
XIV. DELINQUENT FEES AND PENALTIES	
Notice: This form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the "Delinquent Fee and Penalty Protocol." For more information regarding Delinquent Fees and Penalties, go to the TCEQ Web site at: www.tceq.state.tx.us/agency/delin/index.html.	
XV. SIGNATURE	
The signature below confirms that I have knowledge of the facts included in this application and that these facts are true and correct to the best of my knowledge and belief. I further state that to the best of my knowledge and belief, the project for which application is made will not in any way violate any provision of the Texas Water Code (TWC), Chapter 7, Texas Clean Air Act (TCAA), as amended, or any of the air quality rules and regulations of the Texas Commission on Environmental Quality or any local governmental ordinance or resolution enacted pursuant to the TCAA. I further state that I understand my signature indicates that this application meets all applicable nonattainment, prevention of significant deterioration, or major source of hazardous air pollutant permitting requirements. I further state that I have read and understand TWC §§ 7.177-7.183, which defines CRIMINAL OFFENSES for certain violations, including intentionally or knowingly making or causing to be made false material statements or representations in this application, and TWC § 7.187, pertaining to CRIMINAL PENALTIES.	
NAME: Randy Bird SIGNATURE: RBird DATE: 9-5-08 Original Signature Required	

RPS JDC

404 Camp Craft Rd., Austin, Texas 78746
Tel: (512) 347 7588 Fax: (512) 347 8243
Internet: www.rpsgroup.com/energy

Air Quality Modeling Analysis
Air Quality Permit Nos. 86088 and PSD-TX-1160

White Stallion Energy Center, LLC
Bay City, Matagorda County, TX

December 2008

United Kingdom Australia USA Canada Ireland Netherlands Malaysia

RPS JDC

404 Camp Craft Rd., Austin, Texas 78746
Tel: (512) 347 7588 Fax: (512) 347 8243
Internet: www.rpsgroup.com/energy

December 22, 2008

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

Re: Air Quality Modeling Analysis
Air Quality Permit Nos. 86088 and PSD-TX-1160
White Stallion Energy Center, LLC
Circulating Fluidized-Bed (CFB) Steam Electric Generation Facility
Bay City, Matagorda County

Dear Mr. Hamilton:

On behalf of White Stallion Energy Center, LLC (WSEC), RPS JDC, Inc. is submitting the enclosed Air Quality Modeling Analysis in support of the above-referenced permit. The modeling results demonstrate that the proposed project will be in compliance with the applicable NAAQS, PSD Increments, TCEQ Regulation emission standards and TCEQ health effects guidelines.

This letter serves to certify that the modeling has been performed following the appropriate TCEQ guidelines. If you have any questions concerning the enclosed modeling report, please feel free to call me at 512-347-7588.

Sincerely,

RPS JDC, Inc.

STATE OF TEXAS
JOE M. KUPPER
79749
REGISTERED PROFESSIONAL ENGINEER
12/22/08

Joe M. Kupper, P.E.
Senior Consulting Engineer

JMK/sab
Enclosure

cc: U.S. Environmental Protection Agency, Region 6, Dallas
Ms. Donna Phillips, Regional Director, TCEQ Region 12
Mr. Randy Bird, Chief Operating Officer, White Stallion Energy Center, LLC

RPS JDC

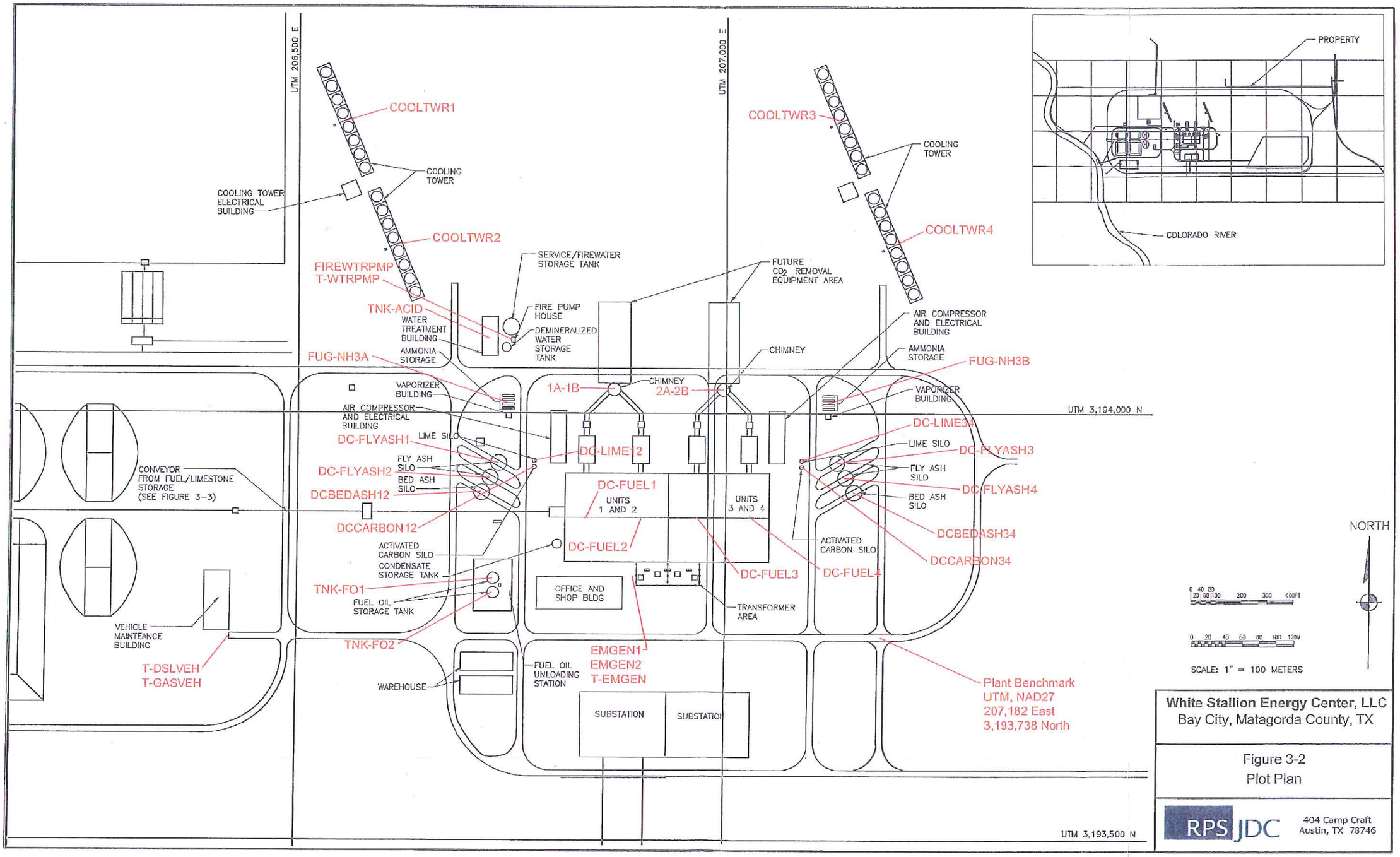
Section 3
Area Map and Plot Plan

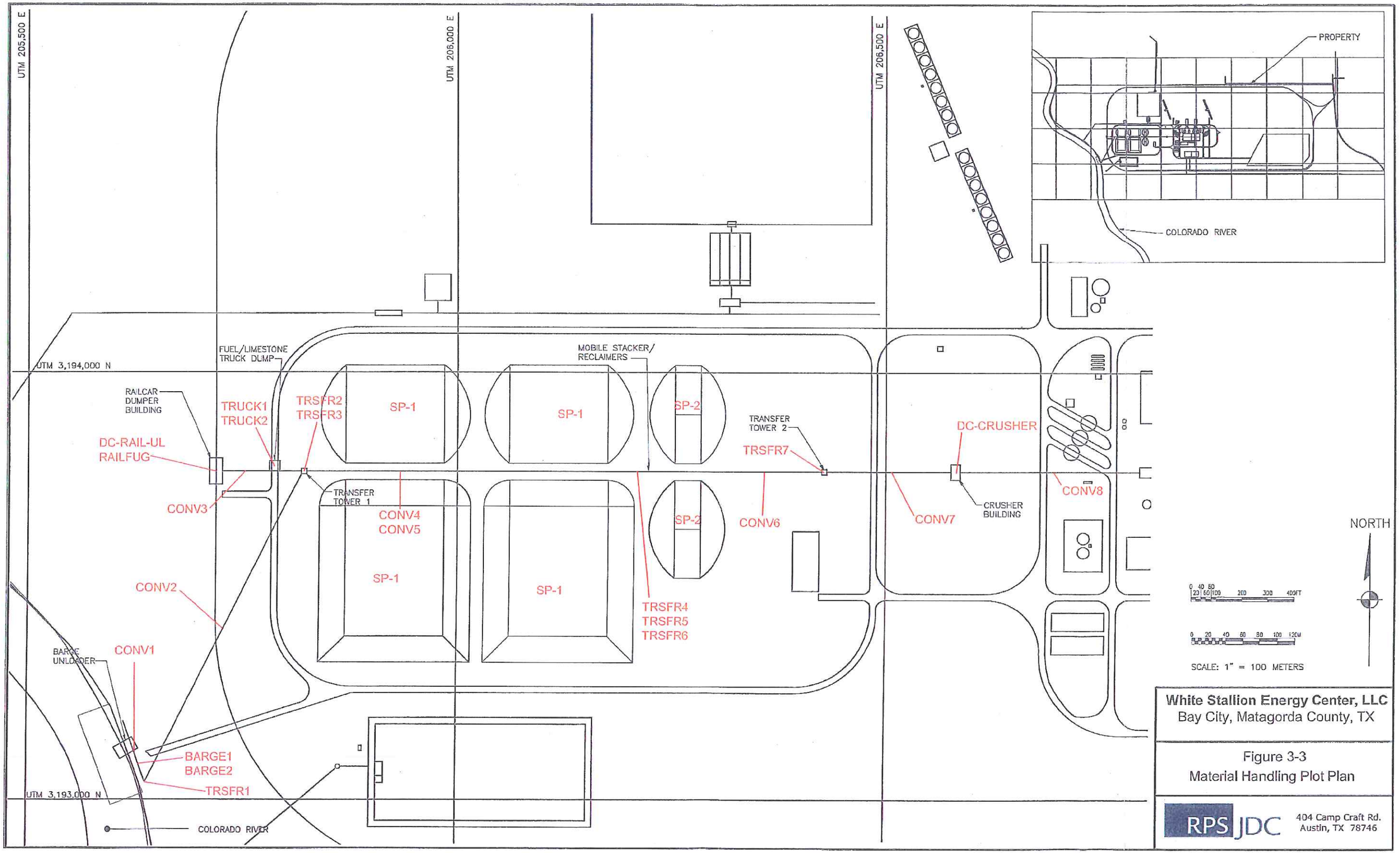
The WSEC plant will be located on the east side of the Colorado River, approximately 10 miles south of the city of Bay City in Matagorda County. An area map showing the location of the site is included as Figure 3-1. The map is based on USGS 7.5-minute series topographical maps. There are no schools located within 3000 feet of the proposed new facility.

Plot plans of the WSEC plant are provided in Figures 3-2 and 3-3. The plot plans indicate the location of the proposed equipment associated with the permit application and included in the modeling analysis. The property boundary is also the fence line; therefore, for state modeling and PSD modeling, modeled concentrations were determined at this boundary.

The nearest PSD Class I Areas are: 1) Big Bend National Park, located approximately 415 miles (670 km) west of the site in Brewster County; 2) Caney Creek Wilderness Area, located 400 miles (645 km) north-northeast of the site in southwestern Arkansas; 3) Breton National Wilderness Area, located 430 miles (690 km) east of the site in southeastern Louisiana; and 4) Wichita Mountains National Wildlife Refuge, located 430 miles (690 km) northwest of the site in southwestern Oklahoma. Because no PSD Class I areas exist within 100 km (62 miles) of the facility, no map of the nearest PSD Class I areas is presented. Also, because the nearest Class I area is located greater than 100 km from the proposed site, a Class I Impact Area Analysis is not required.

The site does is not located in any TCEQ Air Pollutant Watch List (APWL) Area.


UTM 206,500 E
UTM 207,000 E
COOLTWR1
COOLTWR2
COOLTWR3
COOLTWR4
COOLING TOWER
COOLING TOWER ELECTRICAL BUILDING
FIREWTRPMP
T-WTRPMP
TNK-ACID
WATER TREATMENT BUILDING
SERVICE/FIREWATER STORAGE TANK
FIRE PUMP HOUSE
DEMINERALIZED WATER STORAGE TANK
FUTURE CO_2 RENOVAL EQUIPMENT AREA
AIR COMPRESSOR AND ELECTRICAL BUILDING
AMMONIA STORAGE
FUG-NH3A
FUG-NH3B
CHIMNEY
1A-1B
2A-2B
VAPORIZER BUILDING
UTM 3,194,000 N
DC-LIME34
DC-LIME12
DC-FLYASH1
DC-FLYASH2
DC-FLYASH3
DC-FLYASH4
LIME SILO
FLY ASH SILO
BED ASH SILO
DCBEDASH12
DCCARBON12
DCBEDASH34
DCCARBON34
DC-FUEL1
DC-FUEL2
DC-FUEL3
DC-FUEL4
UNITS 1 AND 2
UNITS 3 AND 4
ACTIVATED CARBON SILO
CONDENSATE STORAGE TANK
TNK-FO1
TNK-FO2
FUEL OIL STORAGE TANK
OFFICE AND SHOP BLDG
TRANSFORMER AREA
CONVEYOR FROM FUEL/LIMESTONE STORAGE (SEE FIGURE 3-3)
VEHICLE MAINTEANCE BUILDING
T-DSLVEH
T-GASVEH
WAREHOUSE
FUEL OIL UNLOADING STATION
EMGEN1
EMGEN2
T-EMGEN
SUBSTATION
SUBSTATION
Plant Benchmark
UTM, NAD27
207,182 East
3,193,738 North
UTM 3,193,500 N
PROPERTY
COLORADO RIVER
NORTH
SCALE: 1" = 100 METERS
White Stallion Energy Center, LLC
Bay City, Matagorda County, TX
Figure 3-2
Plot Plan
RPS JDC
404 Camp Craft
Austin, TX 78746


UTM 205,500 E
UTM 206,000 E
UTM 206,500 E
UTM 3,194,000 N
UTM 3,193,000 N
PROPERTY
COLORADO RIVER
FUEL/LIMESTONE TRUCK DUMP
MOBILE STACKER/ RECLAIMERS
RAILCAR DUMPER BUILDING
TRUCK1
TRUCK2
TRSFR2
TRSFR3
SP-1
SP-1
SP-2
TRANSFER TOWER 2
TRSFR7
DC-CRUSHER
DC-RAIL-UL
RAILFUG
CONV3
TRANSFER TOWER 1
CONV4
CONV5
SP-1
SP-1
SP-2
SP-2
CONV6
CONV7
CRUSHER BUILDING
CONV8
NORTH
CONV2
TRSFR4
TRSFR5
TRSFR6
BARGE UNLOADER
CONV1
BARGE1
BARGE2
TRSFR1
COLORADO RIVER
SCALE: 1" = 100 METERS
White Stallion Energy Center, LLC
Bay City, Matagorda County, TX
Figure 3-3
Material Handling Plot Plan
RPS JDC
404 Camp Craft Rd.
Austin, TX 78746

From:	Joe Kupper
Sent:	Monday, February 16, 2009 10:44 AM
To:	'Matthew Kovar' <MKovar@tceq.state.tx.us>
Cc:	Randy Hamilton <RHAMILTO@tceq.state.tx.us>; Jeff Eads <JEads@tceq.state.tx.us>; Steve Langevin <slangevin@jdconsult.com>
Bcc:	'Groten, Eric' <egroten@velaw.com>; Randy Bird <rbird@whitestallionenergycenter.com>; Shanon DiSorbo <sdisorbo@jdconsult.com>
Subject:	FW: Permit 86088 - White Stallion Energy Center
Attach:	Tables 2_16_09.pdf;Figures 2_16_09.pdf;PM10 AOI REVISED.zip;PM10 ANNUAL REVISED NAAQS.zip;PM10 24HR REVISED NAAQS.zip;SILICA REVISED.zip

Mr. Kovar,

On February 13, 2009 WSEC submitted revised emission calculations affecting PM10 emissions from three sources. The fuel and limestone stockpile emissions increased and new PM10 emissions from a proposed ash landfill were added. The proposed landfill will be located to the east of the CFB's as shown on the attached new Figure 3-4. Revised emission source input Table 5-1 through 5-4 are attached.

Attached is revised PM10 modeling with these revised and new emission rates included. The ash landfill emissions have been modeled as an area source. The entire ash landfill area will not be in use at the same time. The area source dimensions are based on the area used in the emission calculations and the placement of the area source is as near the other PM10 emissions and the fence line as possible to represent worst-case conditions. I re-ran the NAAQS/PSD Increment modeling with the same significant grids used in the original modeling. The maximum concentrations increased slightly, but are still below the standards and increments. Revised Tables 7-1 and 7-4 are attached. I also re-ran the AOI modeling runs that identified a few additional receptors that were above the 24-hour and annual de minimis levels; therefore, I ran the NAAQS/PSD Increment modeling at these additional receptors to demonstrate that the maximum concentrations had been identified.

The revised modeling for silicon dioxide (silica) is also attached. The maximum 24-hour and annual average concentrations did not change, nor did the maximum number of 1-hour ESL exceedances. Also, the GLCni concentration did not change. There were a few receptors near the property boundary that had increased concentrations; therefore, a revised Figure 7-24 is attached.

If you any questions regarding this revised modeling please let me know.

Thanks,

Joe Kupper, P.E., Senior Consulting Engineer
RPS JDC, Inc., 404 Camp Craft Rd., Austin, TX 78746
☎ Office (512) 879-6684 (512) 347-8243 ✉ kupperj@rpsgroup.com

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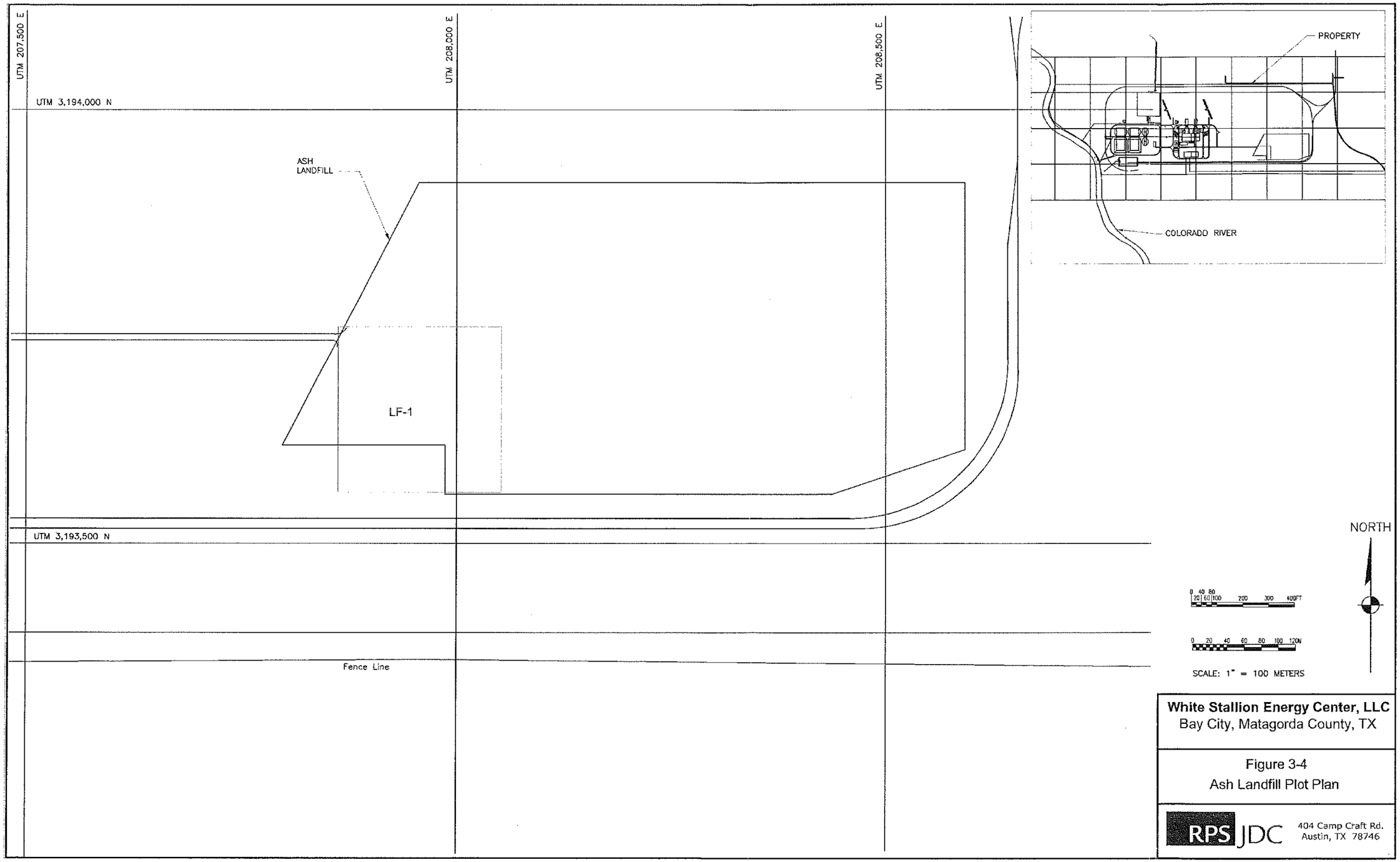
RPS Group Plc, company number: 208 7786 (England). Registered office: Centurion Court, 85 Milton Park Abingdon Oxfordshire OX14 4RY.



White Stallion Energy Center, LLC
Bay City, Matagorda County, TX

Figure 3-4
Ash Landfill Plot Plan

RPS JDC 404 Camp Craft Rd. Austin, TX 78746

From: Kathleen Alsup <kalsup@jdconsult.com>
Sent: Wednesday, January 7, 2009 9:00 AM
To: Shanon DiSorbo <sdisorbo@jdconsult.com>; Steve Langevin <slangevin@jdconsult.com>; Joe Kupper <kupperj@rpsgroup.com>
Subject: FW: Sky Energy- White Stallion Energy Center_Foster Wheeler Questions
Attach: WSEC JDC CFB Emissions.xls;Sky Energy- White Stallion- Additional Questions.msg

---

Take a look at Foster Wheeler's questions and let's see if we can provide answers.

Kathleen Alsup
Senior Consultant

RPS JDC, Inc., 404 Camp Craft Rd., Austin, TX 78746
(Office (512) 347-7588 (Cell (512) 970-2409
2 (512) 347-8243 * AlsupK@rpsgroup.com
-----Original Message-----
From: Shell, Larry [mailto:ShellLarry@stanleygroup.com]
Sent: Wednesday, January 07, 2009 12:01 AM
To: Kathleen Alsup
Cc: Randy Bird; Schebler, Steven
Subject: FW: Sky Energy- White Stallion Energy Center_Foster Wheeler Questions

Kathleen -

I sent the attached JDC spreadsheet to Foster Wheeler on 12/16 in response to their questiions about discrepancies in the emission limits in the draft permit. See the email below. Foster Wheeler has now come back with additional questions on the limits they need to meet. See the email attached. I need you to help answer these questions. Thanks.

Also, we have been working on rearranging the site plan to avoid the wetlands as we discussed just before Christmas. But we have not received the electronic file with the wetlands shown. We have been working with something we have scabbed together. We would like to add the wetlands file to the general arrangement drawing before we send it out for review to confirm we are actually avoiding the wetlands as intended. Thanks again.

Larry Shell
Vice President & Sr. Project Manager
Stanley Consultants, Inc.
225 Iowa Avenue
Muscatine, Iowa 52761
Telephone: 563-264-6455
Fax: 563-264-6658
Email: shelllarry@stanleygroup.com

-----Original Message-----
From: Shell, Larry
Sent: Tuesday, December 16, 2008 8:25 AM
To: Oprea, Larry
Cc: Schebler, Steven; Randy Bird; Kathleen Alsup
Subject: RE: Sky Energy- White Stallion Energy Center_Foster Wheeler Questions

Larry -

EDF Exhibit 124

Attached is a spread sheet from WSEC's environmental consultant which clarifies the basis for the emission limits in the draft permit. I hope this answers your questions.

Larry Shell
Vice President & Sr. Project Manager
Stanley Consultants, Inc.
225 Iowa Avenue
Muscatine, Iowa 52761
Telephone: 563-264-6455
Fax: 563-264-6658
Email: shelllarry@stanleygroup.com

-----Original Message-----
From: Oprea, Larry [mailto:Larry_Oprea@fwc.com]
Sent: Monday, December 08, 2008 9:09 AM
To: Shell, Larry
Cc: Schebler, Steven
Subject: FW: Sky Energy- White Stallion Energy Center_Foster Wheeler Questions

Larry,

Our Engineering Group is presently evaluating the fuels and emission limits as provided from Stanley Group for the Sky Energy Center Project.

Based on our first review of the draft Permit Special Conditions, a few questions have come up where we will need clarification. Please note the four items below.

1. The HCl emission limit as specified in the table on the 3rd page of the draft Special Conditions is 0.000004 lb/MMBtu for coal and 0.0009 lb/MMBtu for petcoke. The HCl permit limit specified in the last section of the document indicates a maximum limit of 14.4 lb/hr, which translates (based on 3300 MMBtu/hr heat input) to 0.0044 lb/MMBtu. Please clarify this item and also note that we would question why the permit limit would be higher for coke as opposed to coke when the coal contains more chlorine.
2. The HF emission limit as specified in the same table is 0.00002 lb/MMBtu for coal and 0.00008 lb/MMBtu for petcoke. The HF permit limit specified in the last section of the document indicates a maximum limit of 2.0 lb/hr, which translates (based on 3300 MMBtu/hr heat input) to 0.00061 lb/MMBtu. Please clarify this item and again, we would question why the permit limit would be higher for coke as opposed to coke when the coal is likely (see 3 below) to contain more fluorine.
3. The fluorine content in the coal is specified in the analysis provided under trace elements is listed as ND. As this is not provided, we could back-calculate the allowable fluoride level in the coal to achieve the target emission level (once we get clarification on 2 above). Please advise on this item.
4. No lb/MMBtu limit is provided for lead (Pb) in the table of the draft Special Conditions. Similar to the fluorine, we could infer a

limit from the lb/hr value at the end of the permit. Please advise.

Please request the Client provided a response to the above Items. In order to continue our work, we would request a response by next Monday.

Thanks

Larry O.

From: Shell, Larry [mailto:ShellLarry@stanleygroup.com]
Sent: Mon 12/1/2008 6:05 PM
To: Oprea, Larry
Cc: Schebler, Steven; Randy Bird
Subject: White Stallion Energy Center

Larry-

We have received fuel analyses for the White Stallion Energy Center (WSEC) project in Texas. Refer to the attachment. The coals are Illinois Basin coal from Riverview #9 and #11 seams in Southern Illinois. The analyses are mostly complete. The Ultimate Analyses do not include moisture, but it appears the numbers can be adjusted based on the moisture values in the lower left hand corner of each sheet. We do not have a petcoke analysis. Petcoke will be fired as an opportunity fuel as a blend with coal.

Also included is the draft permit emission limits from the Air Permit application. Proposed emissions are shown on pages 2 - 4, and the last 8 pages, "Emission Sources - Maximum Allowable Emission Rates".

SO2 emissions given in lb/MBTU are said to represent 99% SO2 removal. The limits proposed are BACT and are taken from various existing and proposed permits, including Smith 1.

Please review the suitability of the coal fuel using the Foster Wheeler CLECO existing boiler design. Questions include:

1. Can Foster Wheeler meet emission limits as proposed in the draft permit with the proposed Illinois basin coal?
2. If not, which items are suspect?
3. Assuming a typical petcoke, what percentage of petcoke, if any, blended with coal may be fired and still meet emission limits?

5. Is the existing CLECO boiler design suitable without major re-engineering while meeting performance and emission limits? Is another existing Foster Wheeler boiler design more suited to this fuel?

The goal is to use an existing Foster Wheeler boiler design in a replication of a reference plant as that would save Foster Wheeler and the Owner considerable money and time on this project. Your comments and projections as to what we can achieve with these coals are greatly appreciated.

Larry Shell
Vice President & Sr. Project Manager
Stanley Consultants, Inc.
225 Iowa Avenue

Muscatine, Iowa 52761
Telephone: 563-264-6455
Fax: 563-264-6658
Email: shelllarry@stanleygroup.com

From:	Kathleen Alsup
Sent:	Wednesday, January 7, 2009 9:00 AM
To:	Shanon DiSorbo <sdisorbo@jdconsult.com>; Steve Langevin <slangevin@jdconsult.com>; Joe Kupper <kupperj@rpsgroup.com>
Subject:	FW: Sky Energy- White Stallion Energy Center_Foster Wheeler Questions
Attach:	WSEC JDC CFB Emissions.xls;Sky Energy- White Stallion- Additional Questions.msg

Take a look at Foster Wheeler's questions and let's see if we can provide answers.

Kathleen Alsup
Senior Consultant

RPS JDC, Inc., 404 Camp Craft Rd., Austin, TX 78746
(Office (512) 347-7588 (Cell (512) 970-2409
2 (512) 347-8243 * AlsupK@rpsgroup.com

-----Original Message-----
From: Shell, Larry [mailto:ShellLarry@stanleygroup.com]
Sent: Wednesday, January 07, 2009 12:01 AM
To: Kathleen Alsup
Cc: Randy Bird; Schebler, Steven
Subject: FW: Sky Energy- White Stallion Energy Center_Foster Wheeler Questions

Kathleen -

I sent the attached JDC spreadsheet to Foster Wheeler on 12/16 in response to their questiions about discrepancies in the emission limits in the draft permit. See the email below. Foster Wheeler has now come back with additional questions on the limits they need to meet. See the email attached. I need you to help answer these questions. Thanks.

Redacted

Larry Shell
Vice President & Sr. Project Manager
Stanley Consultants, Inc.
225 Iowa Avenue
Muscatine, Iowa 52761
Telephone: 563-264-6455
Fax: 563-264-6658
Email: shelllarry@stanleygroup.com

-----Original Message-----
From: Shell, Larry
Sent: Tuesday, December 16, 2008 8:25 AM

EDF Exhibit 125

To: Oprea, Larry
Cc: Schebler, Steven; Randy Bird; Kathleen Alsup
Subject: RE: Sky Energy- White Stallion Energy Center_Foster Wheeler Questions

Larry -

Attached is a spread sheet from WSEC's environmental consultant which clarifies the basis for the emission limits in the draft permit. I hope this answers your questions.

Larry Shell
Vice President & Sr. Project Manager
Stanley Consultants, Inc.
225 Iowa Avenue
Muscatine, Iowa 52761
Telephone: 563-264-6455
Fax: 563-264-6658
Email: shelllarry@stanleygroup.com

-----Original Message-----
From: Oprea, Larry [mailto:Larry_Oprea@fwc.com]
Sent: Monday, December 08, 2008 9:09 AM
To: Shell, Larry
Cc: Schebler, Steven
Subject: FW: Sky Energy- White Stallion Energy Center_Foster Wheeler Questions

Larry,

Our Engineering Group is presently evaluating the fuels and emission limits as provided from Stanley Group for the Sky Energy Center Project.

Based on our first review of the draft Permit Special Conditions, a few questions have come up where we will need clarification. Please note the four items below.

1. The HCl emission limit as specified in the table on the 3rd page of the draft Special Conditions is 0.000004 lb/MMBtu for coal and 0.0009 lb/MMBtu for petcoke. The HCl permit limit specified in the last section of the document indicates a maximum limit of 14.4 lb/hr, which

translates (based on 3300 MMBtu/hr heat input) to 0.0044 lb/MMBtu. Please clarify this item and also note that we would question why the permit limit would be higher for coke as opposed to coke when the coal contains more chlorine.

2. The HF emission limit as specified in the same table is 0.00002 lb/MMBtu for coal and 0.00008 lb/MMBtu for petcoke. The HF permit limit specified in the last section of the document indicates a maximum limit of 2.0 lb/hr, which translates (based on 3300 MMBtu/hr heat input) to 0.00061 lb/MMBtu. Please clarify this item and again, we would question why the permit limit would be higher for coke as opposed to coke when the coal is likely (see 3 below) to contain more fluorine.

3. The fluorine content in the coal is specified in the analysis provided under trace elements is listed as ND. As this is not provided, we could back-calculate the allowable fluoride level in the coal to achieve the target emission level (once we get clarification on 2 above). Please advise on this item.

4. No lb/MMBtu limit is provided for lead (Pb) in the table of the draft Special Conditions. Similar to the fluorine, we could infer a limit from the lb/hr value at the end of the permit. Please advise.

Please request the Client provided a response to the above Items. In order to continue our work, we would request a response by next Monday.

Thanks

Larry O.

From: Shell, Larry [mailto:ShellLarry@stanlevgroup.com]
Sent: Mon 12/1/2008 6:05 PM
To: Oprea, Larry
Cc: Schebler, Steven; Randy Bird
Subject: White Stallion Energy Center

Larry-

We have received fuel analyses for the White Stallion Energy Center (WSEC) project in Texas. Refer to the attachment. The coals are Illinois Basin coal from Riverview #9 and #11 seams in Southern Illinois. The analyses are mostly complete. The Ultimate Analyses do not include moisture, but it appears the numbers can be adjusted based on the moisture values in the lower left hand corner of each sheet. We do not have a petcoke analysis. Petcoke will be fired as an opportunity fuel as a blend with coal.

Also included is the draft permit emission limits from the Air Permit application. Proposed emissions are shown on pages 2 - 4, and the last

8 pages. "Emission Sources - Maximum Allowable Emission Rates".

SO2 emissions given in lb/MBTU are said to represent 99% SO2 removal. The limits proposed are BACT and are taken from various existing and proposed permits, including Smith 1.

Please review the suitability of the coal fuel using the Foster Wheeler CLECO existing boiler design. Questions include:

1. Can Foster Wheeler meet emission limits as proposed in the draft permit with the proposed Illinois basin coal?
2. If not, which items are suspect?
3. Assuming a typical petcoke, what percentage of petcoke, if any, blended with coal may be fired and still meet emission limits?

5. Is the existing CLECO boiler design suitable without major re-engineering while meeting performance and emission limits? Is another existing Foster Wheeler boiler design more suited to this fuel?

The goal is to use an existing Foster Wheeler boiler design in a replication of a reference plant as that would save Foster Wheeler and the Owner considerable money and time on this project. Your comments and projections as to what we can achieve with these coals are greatly appreciated.

Larry Shell
Vice President & Sr. Project Manager
Stanley Consultants, Inc.
225 Iowa Avenue
Muscatine, Iowa 52761
Telephone: 563-264-6455
Fax: 563-264-6658
Email: shelllarry@stanleygroup.com

From:	Kathleen Alsup <kalsup@jdconsult.com>
Sent:	Monday, January 12, 2009 4:29 PM
To:	Mark Fuller <fullerm@rpsgroup.com>; Joe Kupper <kupperj@rpsgroup.com>; Chris Stanford <stanfordc@rpsgroup.com>; Scott Jecker <swjecker@whitentongroup.com>
Cc:	Steve Langevin <langevins@rpsgroup.com>; Shanon DiSorbo <disorbos@rpsgroup.com>; Bob Jones <JonesBo@rpsgroup.com>
Subject:	FW: White Stallion Site Plan - Revised
Attach:	21353x02_wetlands.pdf

See attached revised plot plan for WSEC. Please note this is preliminary. The Stanley folks just received the actual wetland delineation electronic files today so some of this may be adjusted again. We'll use this as a starting point to talk at Thursday's meeting. Take a look and be prepared to discuss how these changes may affect the wastewater permit and the air dispersion modeling.

Scott – I talked to Larry this afternoon before I received this file and told him to call you regarding which areas are not jurisdictional wetlands.

Kathleen Alsup
Senior Consultant

RPS JDC, Inc., 404 Camp Craft Rd., Austin, TX 78746
☎ Office (512) 347-7588 ☎ Cell (512) 970-2409
(512) 347-8243 ✉ AlsupK@rpsgroup.com

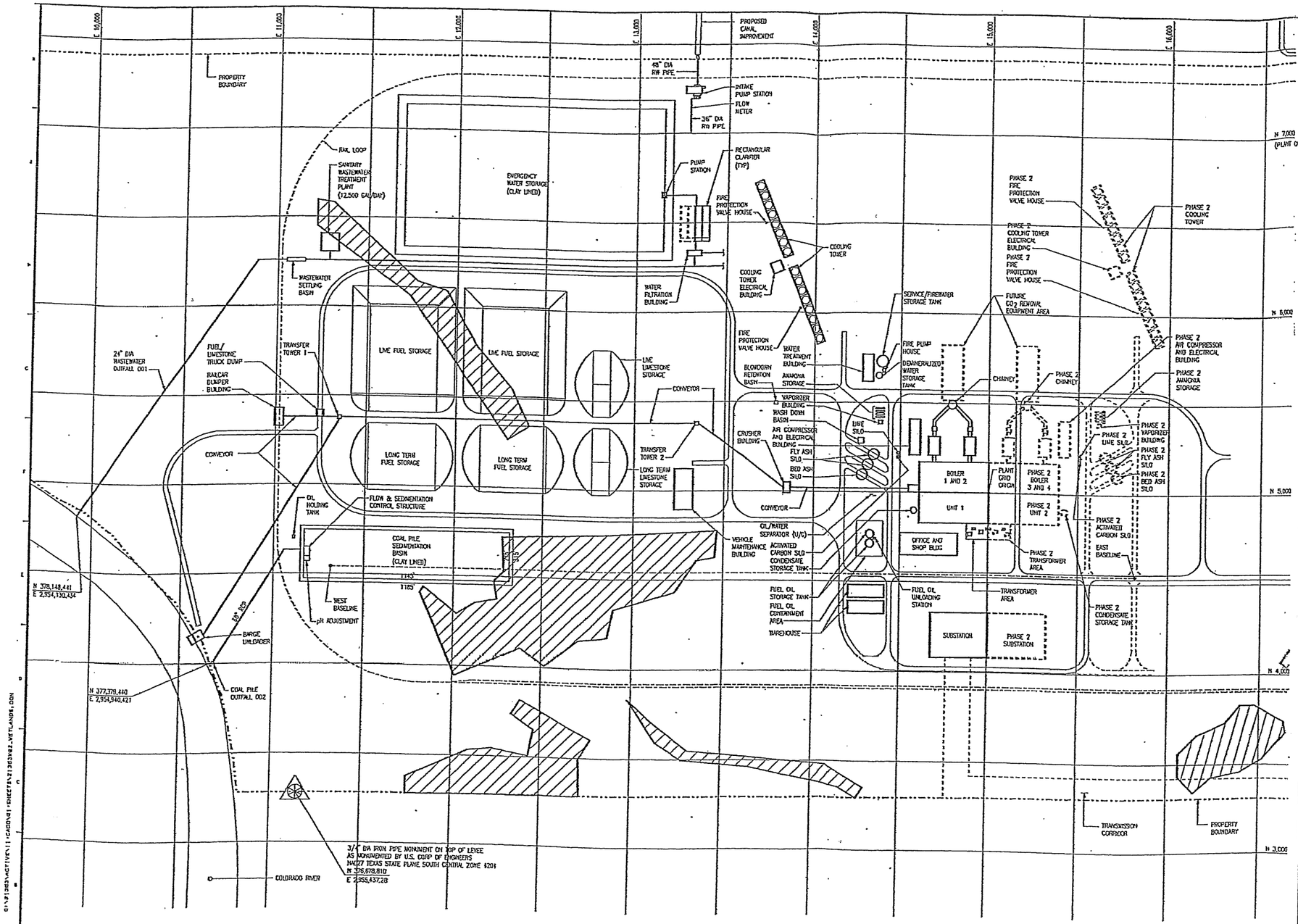
From: Shell, Larry [mailto:ShellLarry@stanleygroup.com]
Sent: Monday, January 12, 2009 3:20 PM
To: Kathleen Alsup; Randy Bird
Cc: Frank Rotondi; Schebler, Steven
Subject: FW: White Stallion Site Plan - Revised

Kathleen -

Attached is a revision in progress of the White Stallion site plan. We have approximated the shapes and locations of the wetland areas to start the re-arrangement. We moved the coal pile north and reshaped the reservoir. We also have rotated the coal pile run off pond. Now that we have the actual wetland files, we can show these areas in their actual locations. We would like to review this drawing during the Thursday conference call. Thanks.

Larry Shell
Vice President & Sr. Project Manager
Stanley Consultants, Inc.
225 Iowa Avenue
Muscatine, Iowa 52761
Telephone: 563-264-6455
Fax: 563-264-6658
Email: shellarry@stanleygroup.com

<<21353x02_wetlands.pdf>>



NOTES:

1. COORDINATE GRID LINES REPRESENT LOCAL PLANT COORDINATES IN US SURVEY FEET. PLANT COORDINATES SHOWN ARE IN GROUND DISTANCE. PLANT COORDINATE N 4540.20, E 15820.00 IS EQUAL TO NAD83 TEXAS STATE PLANE SOUTH CENTRAL ZONE FIPS 4204 GRID COORDINATE N 13501614.067524, E 2928443.335342. CONSULT A LICENSED, REGISTERED LAND SURVEYOR TO OBTAIN THE PROPER GROUND TO GRID CONVERSION FACTOR FOR THIS SITE.
2. THE BASIS OF COORDINATES, DIMENSIONING AND BEARINGS ARE NAD27 TEXAS STATE PLANE SOUTH CENTRAL ZONE 4204

POINT NAME	PLANT COORDINATE		NAD83 TX. ST. PLANE SO CENTRAL ZONE FIPS 4204		NAD27 UTM ZONE 15	
PLANT GRID ORIGIN	N 5000.00	E 15000.00	N 13502031.533962	E 2927600.999373	N 3193678.253	E 206931.874
BASE LINE EAST	N 4540.20	E 15820.00	N 13501614.067524	E 2928443.335342	N 3193738.000	E 207182.000
BASE LINE WEST	N 4540.20	E 11320.00	N. 13501365.066858	E 2923948.169329	N 3193738.005	E 205609.354

NO.	REVISIONS	DWN	APVD	APVD	DATE
3					
2	ISSUED FOR RFP	MWE		LAS	11-18-08
1	REVISED FOR WASTEWATER PERMITTING	MWE		LAS	11-6-08
0	ISSUED FOR WASTEWATER PERMITTING	MWE		LAS	11-10-08

Stanley Consultants INC.

223 West Avenue, Muscatine, Iowa 52761-3754

WHITE STALLION ENERGY, LLC
MATAGORDA COUNTY PROJECT

ENLARGED SITE PLAN

DESIGNED EA. BROWN
DRAWN KR. ROWLES
CHECKED LA. SKILL
APPROVED
APPROVED LA. SKILL
DATE OCTOBER 10, 2008

SCALE: 1"=200'
PROJ. 21353
REV. 3
X2

AT FULL SIZE

WS10001764
Confidential

McElroy, Sullivan & Miller, L.L.P.
Attorneys at Law

MAILING ADDRESS
P.O. BOX 12127
AUSTIN, TX 78711

1201 SPYGLASS DRIVE
SUITE 200
AUSTIN, TX 78746

TELEPHONE
(512) 327-8111

FAX
(512) 327-6566

July 21, 2010

Via Facsimile (409) 766-3165
FOIA Requester Service Center
Galveston District
CESWG-OC
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229

Re: Application of White Stallion Energy Center, LLC for Section 10/404 Permit Application; Permit Application No. SWG-2009-00945.

Dear FOIA Officer:

This is a request under the Freedom of Information Act (5 U.S.C. § 552). I request that a copy of the following documents be provided to me:

1. The complete permit application file for the above-referenced Application of White Stallion Energy Center, LLC, including any amendments or supplements to the Application.
2. All correspondence to or from the U.S. Army Corps of Engineers regarding the above-referenced Application of White Stallion Energy Center, LLC.
3. Any documents reflecting the U.S. Army Corps of Engineers' review of the above-referenced Application of White Stallion Energy Center, LLC.

This request includes copies of oversized documents and color for color copies. I am willing to pay the appropriate fees for this request, if necessary, up to a maximum of $250.00. If you estimate that the fees will exceed this limit, please inform me first.

Thank you very much for your assistance. Should you have any questions or otherwise need to discuss this matter please do not hesitate to contact me.

Sincerely,

for

Thomas M. Weber

McElroy, Sullivan & Miller, L.L.P.
Attorneys at Law

MAILING ADDRESS
P.O. BOX 12127
AUSTIN, TX 78711

1201 SPYGLASS DRIVE
SUITE 200
AUSTIN, TX 78746

TELEPHONE
(512) 327-8111

FAX
(512) 327-6566

August 11, 2010

Via Facsimile (409) 766-3165
Attn: Ana-Valli Gordon
Assistant District Counsel
Freedom of Information Act Officer
Galveston District
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229

Re: FOIA Request Number FA-10-0189; Application of White Stallion Energy Center, LLC for Section 10/404 Permit Application; Permit Application No. SWG-2009-00945.

Dear Ms. Gordon:

On July 21, 2010, pursuant to the Freedom of Information Act (FOIA), we requested the following documents:

1. The complete permit application file for the above-referenced Application of White Stallion Energy Center, LLC, including any amendments or supplements to the Application.
2. All correspondence to or from the U.S. Army Corps of Engineers regarding the above-referenced Application of White Stallion Energy Center, LLC.
3. Any documents reflecting the U.S. Army Corps of Engineers' review of the above-referenced Application of White Stallion Energy Center, LLC.

The request included copies of oversized documents and color for color copies. It also stated that we were willing to pay the appropriate fees for the request, if necessary, up to a maximum of $250.00.

On July 28, 2010, we received a response to the above-referenced request. It does not appear that all of the information requested was included in this response. For example, a number of persons filed comment letters on White Stallion Energy Center, LLC's application, but those comment letters were not included in your response (responsive to paragraph 2). However, the response does not indicate that any documents were withheld. Therefore, we request that you provide us with any additional responsive documents not previously provided with the July 28, 2010 response.

Thank you very much for your assistance. Should you have any questions or otherwise need to discuss this matter please do not hesitate to contact me.

Sincerely,

Thomas M. Weber

11-17-10
Spoke to Mr. Weber he gave go ahead to go forward with the request

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P. O. BOX 1229
GALVESTON, TEXAS 77553-1229

REPLY TO
ATTENTION OF

November 30, 2010

Office of Counsel

Mr. Thomas Weber
1201 Spyglass Drive
Suite 200
Austin, Texas 78746

Dear Mr. Weber,

Reference is made to your Freedom of Information Act (FOIA) requests of November 17, 2010 the requested information was researched and reviewed. The processing cost is FA-11-0023 is $191.00. The cost is for research, review and material reproduced, for FOIA number FA-11-0023. Please make your check payable to "USAED Galveston", and send it to my attention at the above address within 30 days.

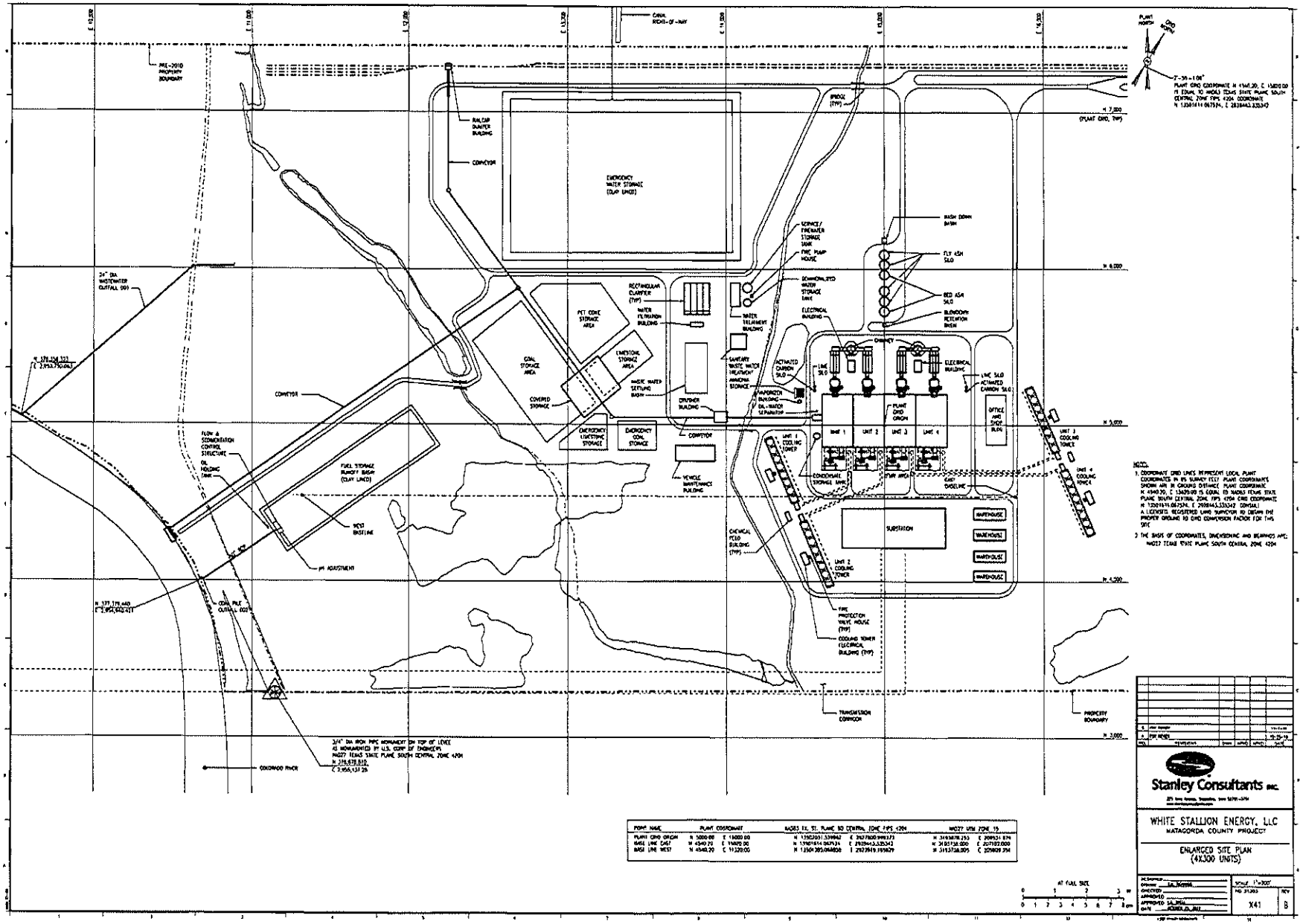
In addition, and for future use, be informed that Title 5, U.S.C., Section 552 (a) (6) (A) was amended in 1997 to increase our FOIA response time from ten working days to twenty working days from date of receipt.

Should you have any questions, please contact me by phone at 409-766-3193. Please refer to Freedom of Information Act Request Numbers FA-11-0023 on any future inquiries.

Sincerely,

FOR

Ana-Valli Gordon
Assistant District Counsel
Freedom of Information Act Officer



POINT NAME	PLANT COORDINATE	NAD83 TX. ST. PLANE SO CENTRAL ZONE FIPS 4204	NAD27 UTM ZONE 15
PLANT GRID ORIGIN	N 5000.00 E 11000.00	N 13502051.539962 E 2627800.999373	N 3193878.253 E 209151.874
BASE LINE EAST	N 4540.20 E 11420.00	N 13501414.067534 E 2628443.335342	N 3193738.000 E 207102.000
BASE LINE WEST	N 4540.20 E 11320.00	N 13501305.064808 E 2627819.193829	N 3193738.005 E 209809.294

Stanley Consult

[illegible] Avenue, [illegible], Iowa 52761 -
www.stanleyconsultants.com

WHITE STALLION ENE

MATAGORDA COUNTY P

ENLARGED SITE PI
(4X300 UNITS)

DESIGNED	
DRAWN	K.H. RICHARDS
CHECKED	
APPROVED	
APPROVED	L.A. BAGLA
DATE	OCTOBER 29, 2010

SC

NO

1 [illegible]

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P. O. BOX 1229
GALVESTON, TEXAS 77553-1229

received 7/29/10

REPLY TO
ATTENTION OF

July 28, 2010

Office of Counsel

Mr Thomas M. Weber
Attorneys at Law
PO BOX 12127
Austin, Texas 78746

Dear Mr Weber

Reference is made to your Freedom of Information Act (FOIA) requests of July 21, 2010 the requested information was researched and reviewed. The processing cost is FA-10-0189 is $60.00. The cost is for research, review and material reproduced, for FOIA number FA-10-0189. Please make your check payable to "USAED Galveston", and send it to my attention at the above address within 30 days.

In addition, and for future use, be informed that Title 5, U.S.C., Section 552 (a) (6) (A) was amended in 1997 to increase our FOIA response time from ten working days to twenty working days from date of receipt.

Should you have any questions, please contact me by phone at 409-766-3193. Please refer to Freedom of Information Act Request Numbers FA-10-0189 on any future inquiries.

Sincerely,

FOR: Ana-Valli Gordon
Assistant District Counsel
Freedom of Information Act Officer

APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT (33 CFR 325)

OMB APPROVAL NO. 0710-003

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, Searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Service Directorate of Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0710-003), Washington, DC 20503. Please DO NOT RETURN your form to either of those addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.

PRIVACY ACT STATEMENT

Authority: 33 USC 401, Section 10; 1413, Section 404. Principal Purpose: These laws require permits authorizing activities in, or affecting, navigable waters of the United States; the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. Routine uses: Information provided on this form will be used in evaluating the application for a permit. Disclosure: Disclosure of requested information is voluntary. If information is not provided, however, the permit application cannot be processed nor can a permit be issued.

One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the proposed activity. An application that is not completed in full will be returned.

(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)

1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETED
SWG-2009-00945		SEP 28 2009	

(ITEMS BELOW TO BE FILLED BY APPLICANT)

5. APPLICANT'S NAME White Stallion Energy Center, LLC	8. AUTHORIZED AGENT'S NAME & TITLE (an agent is not required) Scott W. Jecker - President
6. APPLICANT'S ADDRESS 1302 Waugh Drive #898 Houston, Texas 77019	9. AGENT'S ADDRESS 3413 Hunter Road San Marcos, Texas 78666
7. APPLICANT'S PHONE NUMBERS WITH AREA CODE a. Residence b. Business 713-523-0305	10. AGENT'S PHONE NUMBERS WITH AREA CODE a. Residence b. Business 512-353-3344

11. STATEMENT OF AUTHORIZATION

I hereby authorize Scott W. Jecker to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

APPLICANT'S SIGNATURE — DATE: 9-23-09

NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE (see instructions)
White Stallion Energy Center (WSEC)

13. NAME OF WATERBODY, IF KNOWN (if applicable)
Colorado River

14. PROJECT STREET ADDRESS (if applicable)

15. LOCATION OF PROJECT
Matagorda (COUNTY) TX (STATE)

16. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions)
Mile Marker 14 of the Colorado River, N 28 60'37.79" W 96 00' 44.11"

17. DIRECTIONS TO THE SITE
From the intersection of State Highway (SH) 35 and SH 60 in Bay City, Texas, follow SH 60 south for approximately 3 miles. Turn right (southwest) onto County Road (CR) 2668. Follow CR 2668 for approximately 7.4 miles. Turn right (west) onto private road within proposed project area.

18. NATURE OF ACTIVITY (Description of project, include all features)

Project includes the construction of clean, low emission, solid fueled power plant, transportation corridors, barge dock facility, and other associated facilities (Figures 2-14).

19. PROJECT PURPOSE (Describe the reason or purpose of the project, see instructions)

WSEC's purpose is to supply base load power generation into the Southern and Houston zones of the ERCOT (Texas) power region. These sub-areas have long been operating at progressively higher record peak load demands and power prices. There is a growing critical need for low cost power generation to supply this demand over the next 30 years.

USE BLOCKS 20-22 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. REASON(S) FOR DISCHARGE

Construction of low emission power plant, railroad line, and barge dock facility.

21. TYPE(S) OF MATERIAL BEING DISCHARGED AND THE AMOUNT OF EACH TYPE IN CUBIC YARDS

2 Outfall Structure Aprons - concrete rip rap = 15 cubic yards
2 Barge Facility Supports - sheet piling and concrete = 5800 cubic yards
Plant Site Construction - base material and concrete = 13120 cubic yards (estimated)

22. SURFACE AREA IN ACRES OF WETLANDS OR OTHER WATERS FILLED (see instructions)

Section 10: 0.016 acres
Section 404: 8.133 acres

23. IS ANY PORTION OF THE WORK ALREADY COMPLETE? YES ○ NO ● IF YES, DESCRIBE THE WORK

24. ADDRESSES OF ADJOINING PROPERTY OWNERS, LESSEES, ETC. WHOSE PROPERTY ADJOINS THE WATERBODY (If more than can be entered here, please attach a supplemental list)

See attached list.

25. LIST OF OTHER CERTIFICATIONS OR APPROVALS/DENIALS RECEIVED FROM OTHER FEDERAL, STATE, OR LOCAL AGENCIES FOR WORK DESCRIBED IN THIS APPLICATION

AGENCY	TYPE APPROVAL*	IDENTIFICATION NUMBER	DATE APPLIED	DATE APPROVED	DATE DENIED
TCEQ	Air permits	88088, PSD-TX-1160, HAP 28, PAL26	09-05-2008	Final Draft Issued	
TCEQ	Wastewater		02-20-2009	Pending	

* Would include but is not restricted to zoning, building and flood plain permits.

26. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

SIGNATURE OF APPLICANT	DATE	SIGNATURE OF AGENT	DATE
	9-23-09		9-23-09

The application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.
18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and will fully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, facticious, or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both.

SOAH DOCKET NO. 582-09-3008
TCEQ DOCKET NO. 2009-0283-AIR

IN THE MATTER OF WSEC ENERGY CENTER, L.L.C. APPLICATION FOR AIR QUALITY PERMIT NOS. 86088, HAP28, PAL26, AND PSD-TX-1160	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

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Exhibit B

- whether WSEC's ozone modeling met the requirements of law;
- whether WSEC properly used PM_{10} as a surrogate for $PM_{2.5}$;
- whether WSEC's air dispersion modeling properly reflected the requirements of state law;
- whether WSEC properly evaluated the project's potential for adverse effects on public health or welfare;
- whether WSEC properly conducted the BACT analysis;
- whether WSEC properly conducted the MACT analysis;
- whether the ED's inclusion of Special Condition 45 in the draft permit was proper;
- whether the inclusion of a CEMS is required for the evaluation of PM; and
- whether a PAL permit is permissible under the Texas SIP?

VI. WSEC'S MULTIPLE PROPOSED SITE PLANS

The first of the issues raised by Protestants was whether WSEC intended to build the facility as shown in the proposed site plan in the application. At the opening of the hearing, Protestants moved to dismiss the WSEC application or to continue the hearing. Protestants argued that this prehearing relief was required because WSEC had filed with two different regulatory agencies three different proposed site plans for the same power plant. Protestants alleged that the inconsistencies among the site plans undermined WSEC's assertion that the site plan in the application was the facility that WSEC intended to build.

The three applications for which WSEC filed site plans were: the current application for the four Permits, an application for a wastewater discharge permit (also filed with the Commission), and an application for a dredge and fill permit (known as a "404 permit" and filed with the United States Army Corps of Engineers (Corps)). WSEC filed the current application in September 2008, the wastewater discharge permit application in February 2009, and the 404 permit application in September 2009. The three site plans vary the locations of different parts

of the plant. The major difference was the site of the materials handling area of the proposed plant, including a railroad dumper building, a railcar site, a truck site, conveyors, and material storage piles. WSEC identified each of these elements as an emissions site in its air modeling study.[36]

WSEC filed each of the three applications under oath but made no effort to harmonize the different versions of the site plans. About a year before the hearing, WSEC officials exchanged emails about the differences. The officials also sent the emails to the three experts who were to testify for WSEC in this proceeding. At the hearing, WSEC's experts were unable to provide WSEC's reasons for filing the different site plans. Protestants argued that the public had a right to understand and comment on the alternative sites. By the time the hearing had convened, the public comment period had long since passed.

In response, WSEC asserted that the site plan for the current application, the first to be filed, had not changed. Frank Rotondi, the chief executive officer of WSEC, testified that WSEC was "fully willing to comply in every respect with construction of this project according to [the application's filed] site layout."[37] When asked about WSEC's intention to revise the site plans for the other two applications, Mr. Rotondi admitted that it had not yet notified either the Commission or the Corps about the possibility for changes. When asked about the process by which WSEC had decided to file three different site plans for the same power plant, Mr. Rotondi explained that the site plans had been filed without the approval of WSEC's development committee. Mr. Rotondi's responses failed to explain how the filings could not have been authorized by WSEC since the WSEC development committee included WSEC's top two management officials, Mr. Rotondi and Randy Bird, the company's chief operating officer.

Protestants asked that the WSEC application be dismissed or that the hearing be postponed until the site plan issues were resolved. In raising these issues, Protestants relied on TEX. HEALTH & SAFETY CODE ANN. § 382.0291(d), a statutory prohibition against an applicant's

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[36] Rotondi, Tr. I at 87.

[37] Rotondi, Tr. I at 78.

making amendments to an application after the 31st day before the day before a public hearing on the application is scheduled to begin. Protestants' position was that WSEC's most recent filings at the Commission and with the Corps had revealed WSEC's intention to build the power plant using a site plan other than the one filed by WSEC with this application.

The ALJs asked the ED to clarify whether, under the Commission's policies, WSEC's simultaneous filing of multiple site plans would require WSEC to file an amendment to this application. The ED explained that the Commission's policies would require the filing of an amendment only if the applicant were proposing a change in the amount or types of emissions.[38] A restructuring of the site plan generally would not require an amendment. But, the ED went on to explain that the decision ultimately would have to rely on "a case by case review based on the facts."[39]

At the hearing and in briefs, WSEC argued that these matters did not require an amendment or even rise to the level of a legal issue. WSEC asserted that it had proposed no changes to any element of its application. The Commission's direct referral of the case to SOAH meant that WSEC was required to prove the elements of only this application, precisely the action in which WSEC was engaged. WSEC also argued further that the differences among the three site plans were meaningless with respect to the potential impact of the emissions of the proposed power plant.

We found that no Commission rule of procedure or policy directly addressed the issue. In their absence, we ultimately relied on two points to deny Protestants' motion. First, the Commission had referred this application to SOAH for a contested hearing on the merits of this application. Second, Mr. Rotondi testified that WSEC intended to build the facility as stated in this application. Although we were concerned about WSEC's actions in filing other site plans, we concluded that those actions did not change the facts that led the Commission to refer this case to SOAH. If WSEC intended to build the proposed facility as shown in the site plan in this

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[38] Counsel, Tr. I at 32-36.

[39] Counsel, Tr. I at 34.

application, then Protestants' concerns did not rise to the level of a legal basis for continuing the hearing.

VII. OZONE MODELING

Ozone is one of the criteria pollutants for which EPA has set a NAAQS.[40] But, unlike most other pollutants, ozone is a byproduct of two other pollutants, VOCs and NO_x, instead of a direct emission. These ozone precursors combine to produce ozone in the presence of sunlight, but the details of the formation process are poorly understood. More confusingly, some combination of these conditions may actually eliminate ozone from the atmosphere, leading one expert witness to describe the process of ozone formation as "peculiar . . . [and] nonlinear."[41]

Although EPA does not require an applicant to predict the amount of ozone that a facility's emissions will produce, EPA does require an applicant to model the ozone concentrations in the county in which the applicant proposes to build its facility. To assist an applicant in the modeling process, EPA has published "Guideline on Air Quality Models," otherwise known as Appendix W.[42] An applicant that relies on Appendix W must consult with EPA's regional office to determine the most suitable approach in estimating the impact of individual sources.

In the alternative to relying on Appendix W,[43] a Texas applicant may use a Commission-published document, "Air Quality Modeling Guidelines," that includes the Commission's Draft

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[40] See 40 C.F.R. §§ 50.9 and 50.10.

[41] Tran, Tr. IV at 992.

[42] 40 C.F.R. Pt. 51 App. W (July 1, 2003). Appendix W is an appendix to part 51 of title 40 of the Code of Federal Regulations. It is an EPA guideline that recommends air quality modeling techniques for federal, state, and local air quality entities. Appendix W applies only to criteria air pollutants and is intended to be used in judging the adequacy of modeling analyses. The appendix was first published in April 1978 to satisfy the requirements of the FAA by specifying air quality models. It provides a common basis for estimating the air quality concentrations of criteria pollutants used in assessing control strategies and developing emission limits.

[43] 30 TAC § 116.160(d).

Pollutant	Performance Standard (lb/MMBtu)	Compliance Demonstration Period
HCl (coke)	0.0013	3-hour average
HCl (coal)	0.005	3-hour average
HF (coke)	0.0004	3-hour average
HF (coal)	0.0003	3-hour average

SIGNED July 2, 2010.

PAUL D. KEEPER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

KERRIE JO QUALTHROUGH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 582-09-3008

TCEQ DOCKET NO. 2009-0283-AIR

IN THE MATTER OF	)	STATE OFFICE OF
WHITE STALLION ENERGY	)	
CENTER, LLC, APPLICATION	)	
FOR AIR QUALITY PERMIT	)	
NOS. 86088, HAP28, PAL 26	)	
AND PSD-TX-1160	)	ADMINISTRATIVE HEARINGS

HEARING ON THE MERITS

WEDNESDAY, FEBRUARY 10, 2010

BE IT REMEMBERED THAT at 9:20 a.m., on Wednesday, the 10th day of February 2010, the above-entitled matter came on for hearing at the State Office of Administrative Hearings, William P. Clements, Jr., Building, 300 West 15th Street, Room 404, Austin, Texas, before KERRIE JO QUALTROUGH AND PAUL KEEPER, Administrative Law Judges, and the following proceedings were reported by Evelyn Coder and Suzanne Zimmer, Certified Shorthand Reporters of:

Volume 1 Pages 1 - 280

Exhibit C

2

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1 P R O C E E D I N G S
2 WEDNESDAY, FEBRUARY 10, 2010
3 (9:10 a.m.)
4 JUDGE QUALTROUGH: All right. Are we
5 ready to go on the record?
6 All right. This is Docket No. -- SOAH
7 Docket No. 582-09-3008, TCEQ Docket No. 2009-0283-AIR,
8 in the matter of White Stallion Energy Center, LLC,
9 application for Air Quality Permit Nos. 86088, PSD-TX-1160,
10 PAL26 and PSD-TX-1160.
11 My name is Kerrie Jo Qualtrough. I'm
12 the Administrative Law Judge in this matter. With me
13 today is Judge Paul Keeper. We are presiding over
14 this matter.
15 If I could please get the parties to
16 make an appearance, state their name for the record
17 and whether they are ready to proceed, starting with
18 the applicant.
19 MR. GROTEN: Morning, Judge. I'm Eric
20 Groten here for applicant, White Stallion Energy
21 Center. I'll let my co-counsel introduce himself.
22 And we are prepared to proceed.
23 MR. LEE: My name is Patrick Lee,
24 attorney for White Stallion Energy Center.
25 MR. GROTEN: It appears, Your Honor,

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1 that we are still --
2 JUDGE QUALTROUGH: Not working.
3 MR. GROTEN: -- not terribly loud.
4 JUDGE QUALTROUGH: Okay.
5 MR. GROTEN: But if we can all hear each
6 other, I'd suggest we carry on.
7 JUDGE QUALTROUGH: Okay. Let's start
8 with EDF, Environmental Defense fund.
9 MR. WEBER: Thank you, Judge. I'm Tom
10 Weber with the McElroy, Sullivan & Miller firm.
11 Myself and Paul Tough are here on behalf of
12 Environmental Defense Fund, Inc. We're ready to
13 proceed.
14 JUDGE QUALTROUGH: All right. Go ahead,
15 Sierra Club.
16 MS. HANSURI: Good morning, Judges. My
17 name is Layla Hansuri. I'm here with co-counsel
18 Christina Mann. We're with the Environmental
19 Integrity Project, and we represent the Sierra Club
20 and the No Coal Coalition in this matter. We're ready
21 to proceed.
22 JUDGE QUALTROUGH: All right. OPIC?
23 MR. HUMPHREY: Good morning, Your
24 Honors. My name is Scott Humphrey here on behalf of
25 the Office of Public Interest Counsel of the TCEQ, and

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1 I'm ready.
2 JUDGE QUALTROUGH: Okay. ED?
3 MR. HARRISON: Good morning. Booker
4 Harrison and Ben Rhem, TCEQ office of legal services.
5 We're here on behalf of the Executive Director.
6 JUDGE QUALTROUGH: Okay. Are there any
7 preliminary matters that we need to address before we
8 take a witness up?
9 MR. WEBER: Yes, Your Honor.
10 JUDGE QUALTROUGH: Okay.
11 MR. WEBER: If I may, Environmental
12 Defense Fund came across some documents beginning
13 Sunday and continuing into Monday. These were --
14 these are permit applications filed by the applicant
15 with the water quality division of the TCEQ.
16 They're -- it's a wastewater discharge permit, and
17 also an application for a 404 dredge and fill permit
18 filed with the U.S. Army Corps of Engineers. Both of
19 those applications were filed subsequent to the
20 application at issue today -- or the applications at
21 issue today.
22 As part of the application that we are
23 discussing today, there is a site plan attached to it.
24 And that site plan was first filed with the agency
25 back in September 2008. It shows, among other things,

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1 the location of 56 different particulate emissions
2 points, which are all referenced in the application.
3 It's from those points that they calculate or predict
4 ground-level concentrations of the pollutants emitted
5 from the plant and the impacts related to those
6 emissions.
7 Well, since White Stallion filed its air
8 quality permit application, it's filed, like I
9 indicated, the wastewater discharge permit application
10 and a 404 permit application. The wastewater
11 discharge application was prepared and submitted on
12 behalf of White Stallion by the same set of
13 consultants that worked on the -- or at least the same
14 company that worked as consultants on this
15 application, and it was certified -- signed and
16 certified by Randy Bird, White Stallion's chief
17 operating officer.
18 The discharge permit and the 404 permit
19 show a completely different site plan, at least as it
20 relates to the entire western half of the plant. And
21 it shows at least 22 of the 56 particulate emissions
22 points as being depicted at a different location in
23 these subsequently filed permit applications.
24 Emails produced by the applicant show
25 that the change in the site plan was done to reduce

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1 impacts on wetlands, specifically -- or primarily
2 forested wetland. And so those changes were made in
3 anticipation of the 404 permit filed in September of
4 2009.
5 The wastewater discharge permit, by the
6 way, was filed in February 2009; air permit quality
7 application, September 2008, and the air impacts
8 analysis portion of it in December 2008 and
9 February 2009.
10 But the effect of changing the site
11 plan, moving 22 out of 56 emissions points, some
12 hundred of meters, is that the modeling that the
13 applicant used -- dispersion modeling that the
14 applicant used to predict its impacts is based on a
15 site plan that they've now submitted to other
16 agencies, certified to other agencies as the true and
17 correct site plan, but it's different than the site
18 plan that they certified as true and correct in the
19 air quality application.
20 JUDGE QUALTROUGH: Okay.
21 MR. WEBER: Now, the motion is being
22 raised now because, again, I got copies of these
23 permit applications on --
24 JUDGE QUALTROUGH: What is the motion?
25 MR. WEBER: The motion is a motion to

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1 dismiss, or in the alternative, a motion to remand.
2 The application on file is not the
3 application that they've now subsequently sworn to and
4 attested is the site plan in these other applications.
5 And I have a series of exhibits I would like to offer,
6 all public records or documents produced by the other
7 side, that shows we're talking about a site plan that
8 they've now said is not their current site plan.
9 And we have not had a chance to review
10 this site plan, modeled emissions from that site plan
11 or do any kind of analysis on it, and they've had it
12 and known about it. And their consultants in this
13 case have known about it for over a year, and they've
14 submitted to you today, and are about to swear to
15 their prefiled testimony, that their site plan that
16 they've submitted to you as part of their application
17 is true and correct.
18 Before they do that, I think it's
19 incumbent upon me to raise this new issue with you. I
20 apologize for the fact that it's the first thing we
21 have to deal with. But, again, this issue came to my
22 attention Sunday night.
23 JUDGE QUALTROUGH: Okay. Mr. Groten, do
24 you have a response?
25 MR. GROTEN: I do, Your Honor. The

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1 project at issue in this case is the project that is
2 represented in the air permit application, and that is
3 the project for which any permit granted by the
4 Commission for White Stallion -- those are the
5 representations to which we will be held.
6 To the extent that there are changes,
7 then whatever reviews are appropriate to change it
8 down the road, that will occur. If instead the design
9 remains unchanged, then obviously there would have to
10 be conforming changes made in the other applications.
11 These are things that are fluid, a normal part of
12 developing a large-scale project, and there's
13 absolutely no basis to dismiss because we will simply
14 get the permit that is represents -- that is
15 consistent with the representations that were made in
16 the application.
17 As far as Mr. Weber's efforts to
18 interject evidence of what's in other applications,
19 those are not the applications that are on trial in
20 this matter. And so his motion to dismiss is,
21 frankly, meritless. We are going to get a permit,
22 assuming a decision is made to issue it, consistent
23 with the representations that are made in the air
24 permit application.
25 JUDGE QUALTROUGH: Okay.

11

1 MR. WEBER: Judge, if I may -- if I
2 could step you through and make my presentation in
3 support of my motion, I think you'll see how it's
4 extremely relevant and how they are making different
5 representations about where emission sources are to
6 different agencies, and there's no point in going
7 forward today at all.
8 The air quality division has not seen,
9 to the best of my knowledge, the revised site plan
10 that they have sworn to and certified under penalty of
11 law as true and correct.
12 JUDGE KEEPER: Have the other parties
13 had an opportunity to review these documents?
14 MR. WEBER: I produced them as soon as I
15 got them, but it's their documents. I mean, these are
16 all documents that are in their files and their same
17 consultants.
18 JUDGE KEEPER: But I mean everybody
19 else.
20 MR. WEBER: No. I produced them. I
21 don't know if they've had a chance to review them or
22 not. We were Bates labeling frantically yesterday and
23 producing as fast as we could.
24 And, you know, Mr. Groten is saying,
25 "Well, we can change these other applications." Well,

12

1 there's a reason they changed the site plan. They had
2 an original site plan, the one they submitted to the
3 air quality division, but then they changed it for the
4 404 permit.
5 They changed it because they're trying
6 to reduce impacts to wetlands, and reduce the amount
7 of mitigation efforts that they'll have to do. And
8 there's a reason behind why they moved it, and like I
9 said, it's moved 22 out of 56 emissions points, and I
10 would like the opportunity to go through and show
11 those to you, show that the motion has merit and ask
12 that this body dismiss this application so that they
13 can -- they should withdraw it, but you should dismiss
14 this application because we don't know what the site
15 plan looks like.
16 JUDGE QUALTROUGH: Does the Executive
17 Director have a position on what would -- well, let me
18 ask you a question. What would happen -- I think I
19 already know the answer. If we issue this permit
20 based on this site plan, and then they have to make
21 modifications later on down the road to conform with
22 their 404 permit ap and their wastewater ap, would
23 they have to come back in and modify the permit -- any
24 permit that may or may not be -- that may be issued in
25 this proceeding?

13

1 MR. HARRISON: Well, the permit -- I
2 mean, we review the permit based on the
3 representations they have made.
4 JUDGE QUALTROUGH: Right.
5 MR. HARRISON: And so the permit would
6 be issued based on those representations. If, for
7 whatever reason, the applicant had to come in for an
8 amendment or whatever later on down the road, that
9 would be subject to the -- you know, subject to
10 standard rules that they would have to come in and
11 apply for an amendment and get the amendment to make
12 whatever change they needed to make.
13 JUDGE QUALTROUGH: Right.
14 MR. WEBER: But, Judge, I lose my
15 opportunity for hearing in that instance, an
16 opportunity to contest the impacts based on the new
17 emissions points.
18 JUDGE QUALTROUGH: There's no
19 contested-case hearing on an amendment to an air
20 permit?
21 MR. HARRISON: Well, it -- excuse me.
22 Depending on how it is framed, it generally would be
23 subject to public notice with some small exceptions.
24 MS. MANN: And, Your Honor, on that
25 point -- this is Christina Mann for Sierra Club and No

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1 Coal Coalition.
2 It would create a situation where we
3 would have to litigate whether or not there was right
4 to public participation on an issue that we currently
5 have a right to participation on. And so if there are
6 two or three different site plans for the same
7 facility that have been sworn to in an application,
8 either in front of TCEQ or a federal agency, I don't
9 see how it's not relevant to see which site plan we're
10 actually talking about.
11 And if there is a change, then those
12 changes are certainly relevant in this particular
13 proceeding that we're at today because, again, we're
14 going -- I understand what Mr. Groten is saying, they
15 can come in later to conform the application and then
16 possibly subject the hearing to new public
17 participation, or the public may have to litigate the
18 right to do that, a right that we already have today.
19 So it puts us in a -- it puts the public
20 in a position of not understanding what is actually
21 being proposed, of having multiple representations of
22 potentially different site plans, and it's something
23 that we're here and we can at least address that issue
24 first and then decide how to proceed, but at a
25 minimum, I believe we should address that issue.

15

1 MR. HUMPHREY: May I also respond, Your
2 Honor?
3 JUDGE QUALTROUGH: Yes.
4 MR. HUMPHREY: Thank you. When
5 Mr. Groten was making his response, he was saying he's
6 basically standing behind the permit that's here, and
7 if they have to amend it, they have to amend it. He
8 did not get to the core of the motion, which is, did
9 he change the site plan.
10 And I think that's a very significant
11 thing, because if the answer is, "Yes, we changed the
12 site plan," it would be OPIC's position that to go
13 through a hearing on the old site plan is a very, very
14 significant waste of time and resources for your
15 agency and my agency and all of us who are here
16 because then we have to come back and relitigate the
17 actual site plan.
18 And if it's true that the site plan has
19 changed, what we would really be doing here is
20 litigating a hypothetical application. If there is a
21 change in site plan, it does not make any sense for
22 all of us to sort of march forward in this when we
23 know there would be a change at the end. So if, in
24 fact, what Mr. Weber has said is true, that the
25 emission points have changed, I would concur with his

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1 motion, or at the very, very least, this has to be
2 amended. But this proceeding as we stand here would
3 have to stop if there really has been a change.
4 MR. GROTEN: May I -- I'm sorry.
5 MR. WEBER: And I also would like to
6 make a comment.
7 JUDGE QUALTROUGH: I'm sorry. Say that
8 again.
9 MR. WEBER: I would like to make another
10 comment, if I may.
11 JUDGE QUALTROUGH: Okay.
12 MR. WEBER: First off, there's no
13 guarantee that we'll get an opportunity for a hearing
14 because it could be an amendment. It could be a
15 permit alteration. We don't know what the process
16 will be.
17 Secondly, there's also no guarantee that
18 they will fix or amend the representations they've
19 made to the Army Corps of Engineers or the water
20 quality division of the TCEQ, and if it is, in fact,
21 their intent to mitigate and limit impacts on
22 wetlands, then what they have sworn to you today and
23 what they plan to offer into evidence is not valid.
24 It's not truthful.
25 Now, there's a statutory provision.

17

1 It's 382.0291 of the Health and Safety Code, Texas
2 Clean Air Act. It says that if it's necessary to
3 amend an application within 31 days of the hearing
4 on -- of a public hearing in this case, then that
5 application should be sent back and go through the
6 process again; be subject to notice, be subject to
7 comment, be subject to review by the air quality
8 division. They haven't seen what the applicant plans
9 to do. Neither have we, and neither have you.
10 That's exactly what we're doing, is
11 we're going through a hypothetical that they've
12 represented to other agencies they intend to change.
13 JUDGE QUALTROUGH: Mr. Groten?
14 MR. GROTEN: It is -- it would be the
15 first large-scale industrial project -- grass roots
16 project development in history that did not undergo
17 consideration of evolution in its design during the
18 course of a multi-year development process.
19 It is possible that the designs -- that
20 some of the layout changes -- and there's no change in
21 equipment. There's no change in facilities. It's
22 just there were some -- apparently some changes made
23 in the locations of various material handling
24 facilities and so forth that may or may not be the
25 final design, and I can probably assure you, Your

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1 Honors, that the air -- the representations in the air
2 permit application that have been before TCEQ and are
3 now before you, they'll change yet again before this
4 project is ultimately started. It is universal in
5 projects of this kind to see changes -- as-built
6 changes made.
7 This may or may -- the moving around of
8 storage piles may or may not be among them, but to say
9 that just because there has been some reconsideration
10 of facility locations that we have to stop and send
11 the project again, we would never get a project built
12 under those circumstances.
13 And so we, White Stallion, fully
14 understand that the application -- the permit that we
15 get will bind us to the representations that are made
16 in it, and to the extent that those have to be
17 changed, they'll go through appropriate processes.
18 The agency's rules are geared towards
19 ensuring appropriate public participation, given the
20 nature of a particular change. I mean, there's a
21 whole bunch of different ways of making changes. If
22 these are significant enough -- if, in other words,
23 the final design is changed from the way it's
24 represented in the air permit application and if the
25 changes are significant enough, under the various

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1 hierarchy of change options that are set forth in the
2 Texas Clean Air Act and TCEQ's implementing rules,
3 there will be opportunities for those changes to be
4 considered and to go through a degree of public
5 process appropriate to the magnitude of the change.
6 And, therefore, there's really no point
7 in stopping this process because it's reasonably
8 assured that were we to do that and come back, you
9 know, six months from now, there will have been yet
10 further intervening changes in the evolution of the
11 design so --
12 JUDGE QUALTROUGH: Okay.
13 (Brief pause)
14 MR. WEBER: Your Honors, can I have an
15 opportunity to present the evidence to support my
16 motion?
17 JUDGE KEEPER: You're just about to.
18 MR. WEBER: Okay. Great. Thank you.
19 JUDGE KEEPER: We're trying to figure
20 out processes here.
21 (Brief pause)
22 JUDGE QUALTROUGH: All right. Am I on?
23 JUDGE KEEPER: We have people who are
24 standing by to improve the quality of the microphones
25 as soon as we take a break so --

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1 JUDGE QUALTROUGH: Mr. Weber, why don't
2 we go this way. Why don't you distribute your
3 information, let everybody see it. Let the ED staff
4 see it. I mean, if you're just moving the material
5 handling locations -- I mean, we don't know the scope
6 of the proposed changes, and to be honest with you, I
7 don't see how anybody could ever get a permit issued
8 if everything has to match.
9 I mean, you've got -- this permit is
10 going forward, and the applicant is making
11 representations regarding these emissions. And, yeah,
12 there's other federal permits that he's going to have
13 to obtain; federal, state, whatever other
14 authorizations they'll need. So something has got to
15 go first, and, yeah, there may be changes to the
16 layout.
17 I mean, it's my understanding that
18 what's proposed in the application is not the final
19 engineered design of this facility. They don't know
20 what to engineer to at this point in time. They don't
21 have a permit here yet.
22 So this is what we're suggesting, that
23 you go ahead and hand out your information, these
24 permit applications that you say are conflicting or
25 drastically modify this application. And we're going

21

1 to let the ED staff look at it and see if they can --
2 you know, if it's, you know -- do you see what I'm
3 saying? I mean, we're getting into the point where
4 how far have they changed it, where the changes are
5 just a necessity in these type -- when you have a huge
6 facility like this that needs a whole slew of permits.
7 MR. WEBER: Well, if I could step
8 through it, I think I can probably save us --
9 JUDGE QUALTROUGH: No. Let's get
10 everybody to see it first. I mean, so they can --
11 MR. WEBER: Okay.
12 JUDGE QUALTROUGH: Okay? I would
13 like --
14 MR. WEBER: It was produced yesterday,
15 but I can --
16 JUDGE QUALTROUGH: So you have got it.
17 You-all had a chance to look at it?
18 MR. RHEM: We received it yesterday
19 afternoon. We have not had a chance to review it yet.
20 JUDGE QUALTROUGH: Do you have staff
21 here to look at it?
22 MR. HARRISON: Yes.
23 JUDGE QUALTROUGH: I know it's going to
24 be a quick and -- I know it's not going to be an
25 in-depth analysis but --

22

1 MR. WEBER: I would like to add one
2 other point, and then I'll be happy to hand it all
3 out. I would like the opportunity to step through it
4 in support of my motion if that opportunity presents
5 itself. Obviously we think that would be important to
6 the motion.
7 In a recent case, the Las Brisas case,
8 there was omission of material handling facilities and
9 movement of material handling facilities, and in the
10 reply to closing argument filed by the Executive
11 Director, they took the position that the application
12 should be remanded.
13 This situation here is even more
14 egregious. This is not what they planned to do.
15 They've represented to other agencies they're doing
16 something else. So I do think there's precedent for
17 what I'm asking for. I disagree that it should be
18 remanded for consideration by staff.
19 I believe it needs to go through the
20 entire process because an amendment is necessary,
21 according to 382.0291. And I have that statutory
22 provision to hand out, but let me -- you want me to
23 put some packages together and hand it out to
24 everyone?
25 JUDGE QUALTROUGH: Yeah. So we all know

23

1 what you're talking about.
2 MR. WEBER: Thank you, Your Honor.
3 MR. GROTEN: I think I do, and actually,
4 that may be -- it's actually -- Mr. Weber makes a very
5 good point, that in the other case -- because I think
6 it's helpful to distinguish what's going on here.
7 What happened in Las Brisas is, as I understand it,
8 there were actual physical things in the environment
9 that were in different places. These are not
10 physical -- I mean, out of the control of that
11 particular applicant in terms of representing other
12 off-site sources that needed to be considered in the
13 modeling analysis.
14 That's quite different from something
15 that's in a -- that doesn't actually physically exist
16 in the real world and represents, or at least the
17 best -- a reasonable estimate of where they are going
18 to be. And so I don't think that what happened in Las
19 Brisas informs your judgment, except to say that it's
20 relevant.
21 If we were talking about, for example, a
22 modification to an existing plant and we were trying
23 to get a permit to put a new unit on a new plant site
24 and had, in an important way, misrepresented emission
25 points in the existing facilities that were going to

24

1 stay the same and that were considered in the modeling
2 analysis, then that might be relevant.
3 I don't think it's a basis to send the
4 application back. It's something for you to consider
5 in your proposal for decision after all the evidence
6 is in as to whether or not the appropriate
7 demonstrations were made to support the issuance of
8 the permit application, but it doesn't, I think, bear,
9 Your Honor, on your, I think, correct assessment of
10 the realities of project development.
11 MR. WEBER: Your Honors, I was one of
12 the litigators in the Las Brisas case. The motions --
13 or the suggestion to remand is based on arguments I
14 made and evidence I presented on behalf of
15 Environmental Defense in the Las Brisas case.
16 In fact, what the applicant did was
17 change their application in midstream, just as we are
18 seeing here. And there were some facilities in
19 existence, but others that were not. So it's almost
20 identical, except it's more egregious here. Their
21 consultants knew about the change in January 2009, and
22 I have the emails to prove it.
23 JUDGE QUALTROUGH: But there's no change
24 to this application.
25 MR. WEBER: They've sworn that their

25

1 site plan to other agencies is different than the one
2 that is before you.
3 JUDGE QUALTROUGH: Right. But if they
4 get a permit based on this application, and then they
5 get other federal and state permits based on another
6 site plan, I mean, that's -- and they can't comply
7 with both, that's their problem, isn't it? I mean, if
8 they get two permits that are inconsistent
9 essentially --
10 MR. WEBER: Except to the extent that my
11 client loses the opportunity to litigate the plant
12 that ultimately gets built, not tinkering around the
13 edges; 22 out of 56 -- at least 22 out of 56 emissions
14 points that move; the barge facility, a major source
15 of particulate matter, in this case, and they're
16 within two micrograms per cubic meter of exceeding,
17 based on their own modeling, the relevant standard;
18 PM10 PSD short-term increment.
19 They're moving that barge facility, a
20 massive source of particulate matter emissions,
21 300 meters up the river. And they're moving 21
22 other -- or 20 some-odd other sources to the north,
23 closer to another major source of pollution, the
24 Celanese plant, but I lose that opportunity to
25 litigate how that might interact.

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1 MS. MANN: I would just like add that
2 Mr. Groten hasn't answered the question of whether or
3 not the site plan has or has not changed, and that
4 seems to be a real issue here, that we have two
5 materially different site plans that have been -- that
6 are applications being concurrently processed.
7 And you asked the question, Judge
8 Qualtrough, isn't it the applicant's problem whether
9 or not they have two materially different applications
10 and permits? And there's a section of the water code
11 that specifically addresses whether or not you can
12 knowingly make a false material statement or
13 representation. So it would be -- and that would be
14 Section 7.179 of the water code.
15 It would be my -- or Sierra Club and No
16 Coal Coalition's position that if the witnesses for
17 the applicant have made a statement that the site plan
18 is different and it's different as Mr. Weber asserts,
19 that by saying that they're okay with the site plan in
20 this proceeding, that those are materially different
21 and knowingly false representations.
22 And it's just important that we have
23 what's actually going to be happening, as far as they
24 know. We understand the possibility that this permit
25 gets issued and two years down the road there's some

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1 problem and they have to come in for an alteration,
2 but that's not in the situation we're in, Your Honors.
3 We're in the situation where they know
4 the site plan has changed. They haven't updated their
5 air permit application. They had plenty of time to do
6 so, and if we could have been using the most updated
7 site plan through this entire proceeding, we wouldn't
8 be here today with this concern.
9 JUDGE QUALTROUGH: Mr. Weber, how long
10 do you think it will take you to present your motion?
11 You say you still have something else to provide. We
12 don't have anything at this point.
13 MR. WEBER: Right. I understand. I
14 have less than ten handouts.
15 JUDGE QUALTROUGH: Are you going to need
16 a witness?
17 MR. WEBER: It's their documents. It's
18 their application, documents they've produced. I can
19 put a witness on the stand or I can just simply make
20 argument.
21 JUDGE QUALTROUGH: All right.
22 MR. WEBER: No one has calculated
23 emissions. I'm not going to be offering expert
24 testimony. I'm going to be -- the documents -- you
25 know, it's going to be pretty obvious that things have

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1 changed and moved, and I'm just going to be reading
2 into the record statements, sworn certifications in
3 three different permit applications.
4 JUDGE QUALTROUGH: Well, how are we to
5 judge whether this is going to be a material change?
6 I mean, you're asking -- it's going to be a matter of
7 degrees, from what I can tell; you know, either this
8 is not a substantial change, it's not really going to
9 change. I mean, how -- today, sitting here, how am I
10 going to make that judgment call?
11 MR. WEBER: That's right. How is anyone
12 going to make that judgment call? How does EDF? How
13 does the staff know? Staff needs --
14 JUDGE QUALTROUGH: Well, that doesn't
15 answer my question. I think the risk is on the
16 applicant that if he goes forward now with a permit
17 that doesn't -- that he can't live with because of
18 changes, that any changes are going to be so major
19 it's going to require major amendment and new notice
20 and new modeling and all that -- I mean, if he's that
21 close and it's going to, you know, the increment
22 and -- I mean, to me --
23 MR. WEBER: Well, again, I think
24 there's -- it is material to us if we lose the
25 opportunity to litigate it. That determination is not

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1 going to be made by Environmental Defense. That
2 determination is going to be made, you know, somewhere
3 down the road. They know today that the application
4 we're about to have a hearing on is not the one that's
5 going forward.
6 MR. GROTEN: We don't know that, Your
7 Honor.
8 JUDGE QUALTROUGH: I mean, they don't.
9 I mean, they --
10 MR. WEBER: Well, they've sworn to it
11 with other agencies as true and correct. If that
12 wasn't true, what they said to these other agencies,
13 then, as Chapter 7 of the water code indicates,
14 they're subject to enforcement.
15 JUDGE QUALTROUGH: That's their risk. I
16 mean, here we have an application that we're looking
17 at. If they're making other representations to the
18 water quality staff and to the Corps --
19 MR. WEBER: I still believe that my
20 client is harmed by being forced to spend resources
21 going through and litigating an application that's not
22 what they currently represent is true and correct and
23 that we run the risk of missing the opportunity to be
24 heard at a later date on the application that's
25 actually going to be -- the site plan that's actually

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1 going to be built.
2 MR. GROTEN: I would say they're not
3 being forced to do anything.
4 JUDGE KEEPER: Well, here --
5 MR. WEBER: I can offer a witness and
6 they can --
7 JUDGE KEEPER: You know, at this
8 point -- first of all, thank you for the offer of the
9 witness, and that may be helpful to us at some point
10 here.
11 Clearly we are struggling with trying to
12 balance a series of efficiencies here.
13 MR. WEBER: Yes, Your Honor.
14 JUDGE KEEPER: One is that there has
15 been an enormous amount of time that the applicant, as
16 well as the rest of the parties, have spent in getting
17 ready for today's proceeding. So we would like to be
18 able to take advantage of that.
19 On the other hand, if there is some sort
20 of fundamental due process violation that's occurring
21 here, we certainly don't want to go through an entire
22 proceeding only to be overturned at some point,
23 whether administratively or judicially. So the
24 question that we're struggling with is, well, what is
25 the nature of this thing we're looking at? What's the

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1 scope of this potential change? If it's relatively
2 minor, then I think we have to go forward. If it is
3 substantial, then perhaps the motion should be
4 granted.
5 The problem that we're having, I can
6 tell you right now before you even present your
7 information -- and I'm eager to see what your
8 information is, but the problem that we're having is
9 where is it that you draw the line at what is a
10 substantial change?
11 And one of the reasons that our focus
12 keeps shifting from you over here to our left to the
13 Executive Director, is we're looking for assistance in
14 terms of defining what the process is here. We
15 understand that if an applicant comes to the
16 Commission or to the Executive Director with a
17 proposal, it's likely, not just common -- it's likely
18 that there are going to be some differences between
19 the application and what is finally built.
20 And the question that we have is, at
21 what point is it that the change is so substantial
22 that the Executive Director begins to pull at his
23 collar and say, "Well, now, wait a minute"?
24 MR. WEBER: You mean -- I'm sorry.
25 JUDGE KEEPER: Are we talking -- are we

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1 talking about a difference in terms of what the number
2 of acres are in the site plan? Are we talking
3 about -- are we talking about where the facility
4 itself is located within the site plan? Are we
5 talking about something as specific apparently as
6 emission sites? Are we talking about changes that
7 involve 25 meters or 500 meters or a half a mile?
8 MR. HARRISON: In this sense -- the
9 short answer to your question is that there is no
10 specific quantification on either of those metrics.
11 And if I may elaborate, the applicant has submitted an
12 application that the Executive Director has reviewed,
13 and at this point in time, the air quality application
14 for the permit has not been changed. It is the same
15 application that they submitted, that the Executive
16 Director reviewed and that the draft permit was issued
17 predicated upon.
18 Generally, in looking at how to handle
19 changes to a permit, it's viewed basically in terms of
20 alterations or amendments, and the predicate for an
21 amendment is whether there's been a modification to a
22 facility. And a modification -- there is a formal
23 definition in the statute, but it's generally viewed
24 as a change in the character or quantity of emissions.
25 JUDGE KEEPER: Let me stop you right

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1 there. So a change -- an amendment is triggered by --
2 say those words again.
3 MR. HARRISON: A modification.
4 JUDGE KEEPER: And a modification is
5 triggered by --
6 MR. HARRISON: Well, it's generally
7 considered a change in the character or quantity of
8 emissions, but I think I might be straying away a
9 little bit because what we're talking about here is
10 whether or not there's been a change in the
11 representations upon which the permit -- the draft
12 permit has been issued.
13 And like I said, the application hasn't
14 been changed. I'm not familiar -- haven't had an
15 opportunity to review what may have been submitted by
16 the applicant for other -- as an application for other
17 authorizations under -- for other programs, water
18 quality or what have you. And the -- I'm not sure
19 what further I can -- I mean, I'm not -- I want to be
20 as helpful as I can. I'm not sure what further I can
21 add because they haven't represented any change to
22 this application.
23 JUDGE KEEPER: Here is my question, and
24 that is: Let's say that we go through this process
25 and the draft permit is approved and it comes up

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1 before the Commission, and then Ms. Mann or Mr. Weber
2 here stands up and says, "Commissioners, this is not
3 the plan that is being proposed to be built," at which
4 point the Commissioners' vision then sort of tracks
5 what's going on here, attention is then given to
6 counsel, and they say, "Well, at what point do our
7 rules provide that a change in the proposed facility
8 to be built requires a halt in the review process and
9 the more precise information being brought forward,"
10 and your response would be --
11 JUDGE QUALTROUGH: I know you don't know
12 the scope of what's --
13 MR. HARRISON: Well, we would have to --
14 it would have to be a -- I'm not trying to skirt the
15 issue. It would have to be a case-by-case review
16 based on the facts. We would look at the facilities,
17 what they've represented as far as what they're going
18 to build, how they're going to build it, what the
19 process is going to be, what the emissions are going
20 to be, and, you know, how they've proposed to do it
21 versus what actually is going to be done.
22 I mean, for example, there's a common
23 provision in all permits that is referred to as
24 as-built specifications where the applicant makes a
25 proposal, says this is what we propose and this is how

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1 we propose to get there. And then once they build the
2 plant, they submit the actual -- the specifics to what
3 they've built to get to where they were proposing to
4 go. So there may be -- and there may be some changes.
5 I mean, they say, "Well, this is the" --
6 and, again, I don't want to get too general, but, for
7 example, if the result is, "We're going to get to X,
8 and we think we can get there doing these processes,"
9 and we say, "Okay. Well, the result is good. That's
10 where you want to get there, and we think you can get
11 there with your proposal," and we issue -- the permit
12 gets issued, but, for example, in building the plant,
13 they determine, "Well, we need to make some
14 adjustments," and it's like, "Well, we thought we
15 could do this, but we need to make some adjustments,
16 but we still get to X," and then they submit those
17 as-built specifications to the ED, and the ED reviews
18 it and says, "Okay. Well, you got to where you wanted
19 to be. That's fine." Then those changes are -- you
20 know, they're acceptable.
21 JUDGE KEEPER: And where you want to
22 be -- I'm trying to fill in the blanks in my
23 understanding. The "where you want to be" means the
24 emission levels that have been permitted through this
25 process?

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1 MR. HARRISON: Right, that are
2 protective of human health and the environment.
3 JUDGE KEEPER: So, now, Mr. Weber over
4 here is chomping at the bit to tell us what these
5 changes are and why he believes that they might have
6 some substantial effect on where the emissions -- what
7 the differences would be between the emissions
8 proposed and the emissions that would actually result.
9 Do you have anything else to add before
10 he does that?
11 MR. HARRISON: Well, if it's material
12 handling adjustments for water quality that are --
13 that actually result in a reduction in effects, then
14 that's something that likely would be done simply with
15 an alteration that would be approvable by the
16 Executive Director.
17 JUDGE KEEPER: Okay.
18 MR. HARRISON: I mean, if that's the
19 case, then there's no -- if it improves the
20 protectiveness of human health and the environment,
21 then that's something that could be -- and I don't
22 mean to overgeneralize, but likely, that's something
23 that could be done with an alteration and it would fix
24 the problem.
25 MR. WEBER: Judge, can I respond to

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1 that? The alteration he's talking about likely
2 involves additional modeling that I would never get to
3 scrutinize through cross-examination. That's one
4 thing.
5 Secondly, there is a way to figure out
6 whether this is a material change, and that's by
7 having that new site plan, the one that they've
8 certified to the other agencies, reviewed by the
9 staff, modeling performed and submitted pursuant to
10 the rules.
11 There's also guidance under law for this
12 situation, and that's 382.0291. It's not a rule.
13 It's a statute, and the statute says under (d), "An
14 applicant for a license, permit, registration or
15 similar form of permission required by law to be
16 obtained from the Commission may not amend the
17 application after the 31st day before the date on
18 which a public hearing on the application is scheduled
19 to begin." So the applicant can't do that. Okay.
20 Next sentence, "If an amendment of an
21 application would be necessary within that period, the
22 applicant shall resubmit the application to the
23 Commission and must again comply with the notice
24 requirements and any other requirements of law or
25 Commission rule as though the application were

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1 originally submitted to the Commission on that date."
2 JUDGE KEEPER: Well, not to -- I may be
3 stealing Mr. Groten's thunder here, but what we're
4 missing here is, at what point is it that the
5 application amendment is required?
6 MR. WEBER: I think whenever they make
7 representations under -- certified, sworn-to
8 representations to other agencies that they're
9 building a different plant, the emissions from which
10 this agency has never considered or evaluated.
11 MR. GROTEN: There is -- what we have
12 represented to the other agencies is the plan that we
13 expect them to approve, and whatever reconciliation
14 may have to occur down the road, if any -- and we're,
15 at this point, relying solely on Mr. Weber's
16 assertions that there are not only changes but that
17 they're somehow material or significant, but to the
18 extent that there are variations, it is up to White
19 Stallion to reconcile them.
20 And they understand completely that they
21 are at risk, if there is divergence in plans, that one
22 agency or the other and whatever final plans are
23 determined to be the ones they're going to build on,
24 there will have to be conforming changes. It is an
25 inevitable part of large-scale project development,

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1 and I think the appropriate resolution is to let
2 Mr. Weber distribute to the parties -- as Your Honor
3 was suggesting, distribute to the parties whatever
4 evidence of change he wants and perhaps take up his
5 motion later after we've all had a chance to take a
6 look at it.
7 MR. WEBER: One other point about "as
8 built." That's when it's determined, after this whole
9 process, that they're going to change. They knew a
10 year ago.
11 JUDGE QUALTROUGH: Well, I'm not so sure
12 they did. I mean, this is --
13 MR. WEBER: Well, I can present evidence
14 that shows they did.
15 JUDGE QUALTROUGH: And they may end up
16 changing those applications a week from now. I mean,
17 they're kind of -- they're fluid. I mean, they're
18 going to be -- the applications tend to get amended
19 through the process, and this one -- your citation to
20 0291, I mean, it's their position they don't need to
21 change this one at this point. So I'm not sure that
22 (d) is triggered.
23 MR. WEBER: Mr. Groten just got through
24 saying that the applications he's submitted to the
25 other agencies is the application he's going to ask

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1 them to approve. They can't do both. They're not
2 both true statements.
3 JUDGE QUALTROUGH: Well, and
4 unfortunately, we don't have a process where we take
5 the wastewater permit and the air permit and go
6 forward through one hearing process. They are
7 separate, and they are -- I can see where that would
8 be changing over time.
9 MR. WEBER: It should be the experts, it
10 should be the staff and all of our dispersion modeling
11 experts that get the opportunity to look at and
12 evaluate what they actually plan to do. And
13 Mr. Groten just said that the application -- the
14 subsequently submitted applications to these other
15 agencies, that's what they're going to ask them to
16 approve. He just said that. We know this is not
17 their plan, and we have not had a chance, nor has
18 staff, to evaluate what they're going to ask these
19 other agencies, and ultimately, what he's saying, this
20 agency to approve.
21 JUDGE QUALTROUGH: Mr. Humphrey?
22 MR. HUMPHREY: Thank you, Your Honor.
23 In a way, I think we're heading in the same direction
24 here. You know, one of the things that Mr. Harrison
25 said is that he's speaking in generalities, which is

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1 quite understandable because they haven't seen what is
2 about to be presented in this motion.
3 But I think where everyone is sort of
4 going is we're somewhat interested in the staff's
5 position. I mean, obviously the parties have a
6 position about whether this permit should be granted
7 or denied. And I feel strongly that the Executive
8 Director's staff doesn't really -- you know, they
9 don't have any personal interest in this.
10 And it would seem to me that before this
11 ever took place, they were prepared to say, "Well,
12 this permit should be granted based on the modeling,
13 and the modeling gave us a toxicology report and so
14 forth. Now, if they take a look at these changes and
15 they say to Your Honors, "We can still ride in with
16 the modeling that we have because it's not significant
17 and these are our reasons why," that should probably
18 guide you as to where you're going to go.
19 However, if they take a look at these
20 changes and say, you know, "We're relying on some
21 modeling that doesn't accurately reflect what is now
22 going on with these changes, and the modeling that we
23 have in here is not something that we can carry
24 forward to say that the permit should be granted," it
25 would seem to me that if the staff has an opportunity

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1 to take a look at it, they'll be in the best position
2 after they do to tell you, you know, can they still
3 ride in with the information they've provided you in
4 this case up to this point? And if their answer is
5 no, then I think that gives us the answer as to where
6 we go with this proceeding.
7 JUDGE QUALTROUGH: Or they could just go
8 and amend other permit applications.
9 MR. HUMPHREY: Well, certainly, but --
10 JUDGE QUALTROUGH: I mean, that's -- it
11 will never stop. It seems to me that, well, you know,
12 we stop this one, then they'll change that one to
13 conform to this one, or we change this one to conform
14 to that one. I mean, it's just -- to me, it's the
15 permitting process. We don't have a single process
16 for all the authorizations that they're going to have
17 to obtain, so I don't see where it ever stops.
18 MR. HARRISON: Your Honor, if I may, I
19 would definitely like to echo what you just said
20 because we're getting into what are some uncharted
21 waters, where when reviewing an air quality
22 application, we don't reach out and look and say,
23 "Well, what have you represented in your 404
24 applications" or "What have you represented over
25 here?" We look at what is represented in the air

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1 permit application --
2 JUDGE QUALTROUGH: Absolutely.
3 MR. HARRISON: -- and whether or not it
4 meets BACT and whether or not it's going to be
5 protective of the human health and the environment.
6 That's what the Clean Air Act requires, and that's
7 what was done in this case.
8 And I don't want to place unnecessary
9 reliance on -- if I have a permit engineer here -- I
10 don't have a modeler here, but I've got a permit
11 engineer here. I don't know what conclusions he may
12 be able to draw in looking at an application for a 404
13 permit.
14 JUDGE QUALTROUGH: Right.
15 MR. HUMPHREY: There are two modelers
16 that are here, aren't there?
17 JUDGE QUALTROUGH: Well, but, still, I
18 mean --
19 MR. WEBER: That's why it should be
20 reviewed by staff.
21 MR. HARRISON: Sorry. I didn't know
22 that they were here. I'm sorry.
23 JUDGE QUALTROUGH: And any review
24 they're going to do is going to be cursory, at best,
25 in this room.

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1 MR. HARRISON: That's correct.
2 MS. MANN: Your Honor, I didn't
3 interpret Mr. Weber's suggestion that there was
4 anything in those other applications that was relevant
5 to this proceeding other than the site plan, which
6 ought to be identical and so --
7 JUDGE QUALTROUGH: No, not necessarily.
8 I don't agree with that.
9 MS. MANN: Okay. So --
10 JUDGE QUALTROUGH: I mean, because
11 what's going to happen if they get this permit based
12 on site plan? Then they're going to have to go and
13 amend those other applications in order to conform
14 with this one.
15 MS. MANN: And those applications were
16 later in time, and I think this is the --
17 JUDGE QUALTROUGH: Well, that happens.
18 MR. WEBER: But Mr. Groten just got
19 through saying that those were the applications that
20 they intend to ask those agencies to approve.
21 JUDGE QUALTROUGH: Today, and they may
22 change as a result of this hearing process. I mean,
23 those are still fluid, and I don't even know, do they
24 have a draft permit in there yet for the wastewater
25 permit?

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1 MR. WEBER: I don't know. I haven't had
2 a chance to review it.
3 JUDGE QUALTROUGH: Probably not, but I
4 don't know.
5 MR. WEBER: I mean, it's one thing to
6 swear under oath that they intend to amend those other
7 applications so that we know that we're not wasting
8 valuable time and resources going forward so that we
9 don't have to spend our time to give up our
10 opportunity for public participation later or spend
11 additional resources relitigating this case. That's
12 the harm to us going forward under separate sworn-to
13 representations.
14 JUDGE QUALTROUGH: But where does it
15 ever end? I mean, that's my question to you. If we
16 go forward here and this permit ends up driving
17 changes to those applications, then I don't see where
18 the process ends because we can't get everything on
19 the same track.
20 MR. WEBER: This hearing ought to be
21 based on the best information that's available in
22 terms of where they plan to set -- place their
23 equipment. Twenty-two out of 56 particulate emissions
24 points, they've represented to other agencies, are
25 going to be moved. We know that today. They knew it

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1 in January 2009, and in an email said, "How does this
2 affect the dispersion modeling?" I've got it. I've
3 got it in documents that they've produced.
4 JUDGE QUALTROUGH: Let me ask a
5 question. Why are we just getting this today? I
6 mean, if these applications had been filed -- I mean,
7 we could have --
8 MR. WEBER: Yes, Your Honor.
9 JUDGE QUALTROUGH: If this would have
10 been raised earlier, we could have had the staff
11 actually do a more in-depth review than what they can
12 do today.
13 MR. WEBER: I can address that. I got
14 an email from a landowner client in the area who
15 happened to be also an oil and gas lawyer. It sent
16 along a map -- a design by Stanley that looked like
17 the barge facility had moved. I had never seen it
18 before, and I was trying to figure it out.
19 Monday morning, I said, "Well, I'm going
20 to calls the Corps." I called the Corps. I said,
21 "Can I get a copy of the application?" "You've got to
22 make a FOIA request." I said, "Okay. Let me see if
23 the TCEQ has one." I sent somebody over Monday
24 morning to see if the TCEQ had one; got one, looked at
25 it and said, "Well, the barge is different." Let's

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1 look at the water quality discharge -- the wastewater
2 discharge; went over, got a copy of it, looked at it.
3 It was different. Okay?
4 Even though we had requested, through
5 production, communications of the applicant and the
6 agency, these hadn't been produced to us. So these
7 were brand new to me. Obviously, we would have raised
8 this earlier.
9 In the Las Brisas case when I discovered
10 this issue, raised it, filed a motion for summary
11 disposition. It was a different issue somewhat, but,
12 again, it was moving of material handling facilities
13 that the state is now recommended remand on in their
14 briefing.
15 So this is not surprise on my part.
16 This is simply discovering something in preparing for
17 trial.
18 JUDGE QUALTROUGH: All right. Let's go
19 ahead and get the documents distributed and take a
20 break. Does that work for you? Come back -- get the
21 mics changed up, come back in, what, 15, 20 minutes --
22 10:25.
23 MR. WEBER: I had intended to mark them
24 as exhibits and number them. Should I go ahead and do
25 that as if I -- okay. Thank you.

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1 JUDGE QUALTROUGH: All right. We're off
2 the record till 10:25.
3 (Recess: 10:06 a.m. to 10:28 a.m.)
4 (Exhibit EDF Nos. 120 through 126
5 marked)
6 JUDGE QUALTROUGH: All right. It is
7 10:30, and we are back on the record.
8 Let me give the parties -- let me see.
9 I have got several exhibits from EDF. We are going --
10 I'm going to go ahead -- how do you want to handle
11 this? We're going to go ahead and admit these.
12 Go ahead. Do you have any --
13 MR. GROTEN: Have they been offered yet?
14 JUDGE QUALTROUGH: Well, I think part of
15 this is this is just kind of a motion, so essentially
16 we're going to get these into the record.
17 And let me -- let me tell you -- my
18 inclination is to deny your motion to dismiss
19 basically because -- let me ask you a question.
20 What's to stop White Stallion from withdrawing these
21 applications tomorrow?
22 MR. WEBER: I'm sorry. Which
23 applications?
24 JUDGE QUALTROUGH: The wastewater and
25 the 404 permit application.

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1 MR. WEBER: I suppose nothing.
2 JUDGE QUALTROUGH: Nothing. So for us
3 to move forward on your motion, we would have to take
4 evidence. We would have to essentially have a hearing
5 on whether to have a hearing, because we can't dismiss
6 it. We could do a proposal for decision to dismiss.
7 So we're going to have a hearing, and it
8 may be more appropriate that you get this information
9 in on your cross-examination of their modelers, but
10 there's nothing to stop them from changing the
11 wastewater application or the 404 permit application,
12 and then we're nowhere.
13 So I think from a regulatory
14 perspective, the applications may be relevant to the
15 modeling and what they performed so far and how
16 reliable is this modeling at this point in time.
17 Whether then this -- they're going forward on their
18 application, and I think it goes really to the
19 credibility of the modeling they performed if they
20 have changed it.
21 So unless anybody has anything else to
22 say, your motion to dismiss is denied. Now, if you
23 want to get those in, we can go ahead and accept
24 these, or if you want to get them in through
25 cross-examination, we can do that.

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1 MR. WEBER: Since they're all documents
2 from the public record or documents produced by the
3 other side, with one possible exception that I'll have
4 to discuss obviously, I would offer them. And that's
5 Exhibits 120 through 126.
6 I would just, for purposes of
7 explanation, Exhibit 123, which is an overlay, if I
8 may explain, the document -- the hard copy that's
9 underneath comes out of the wastewater discharge
10 permit application. I have complete certified copies
11 of all these applications. I only have two copies.
12 What I've given you is excerpts for
13 purposes of the argument. What I would suggest is
14 maybe with regard to Exhibits 121 and 122 that I put
15 additional certified full copies into the record as
16 soon as I get those copies made. And then with
17 regards -- back to 123, with regards to the overlay,
18 the see-through, this was simply a document prepared
19 by Mr. Kupper that we took and plotted on plastic
20 instead of paper, and it's a document that they've
21 produced. It's a document from their application, and
22 so I would offer all of these exhibits, EDF Exhibits
23 120 through 126 at this time.
24 JUDGE QUALTROUGH: Okay. Let me make me
25 sure I understand. On 123, your hard copy is the site

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1 plan coming out of the wastewater -- it's file
2 stamped. And then the overlay, the plastic overlay is
3 coming out of -- in the air application?
4 MR. WEBER: That's correct, a document
5 produced by the applicant.
6 JUDGE QUALTROUGH: Is the plastic in the
7 application, the actual air application?
8 MR. WEBER: I'm sorry, Your Honor. The
9 plastic itself is not, and the depiction is a
10 depiction of their plant as they've represented in the
11 application. I don't know that -- yes. If you look,
12 it's a document produced -- if you look in the lower
13 right-hand corner, you can see that it's a document
14 that comes out of the Rule 194 disclosures for
15 Mr. Kupper.
16 JUDGE QUALTROUGH: Okay. But this
17 overlay -- is the site map depicted on this overlay in
18 the current air application?
19 MR. WEBER: I don't know that this
20 particular depiction but depictions of one-half of it,
21 I believe, is at least in the material handling
22 section. Let me see if -- maybe if I had a chance to
23 verify.
24 JUDGE QUALTROUGH: My concern is that
25 you've got that from Mr. Kupper.

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1 MR. WEBER: It's Kupper.
2 JUDGE QUALTROUGH: I don't know if
3 that's his final version or that's the actual
4 version -- the representation in the air permit at
5 this point. I don't know what we're going forward
6 with.
7 MR. GROTEN: Mr. Kupper, of course, will
8 be a witness in this case, and he would have the
9 ability to -- I presume ask him whether or not it's --
10 so I would object to this being conditionally
11 admitted, subject to it being affirmed that it
12 accurately depicts what's represented in the
13 application.
14 So if he wants to offer it now and have
15 it admitted conditionally, subject to him proving up
16 later it accurately represents it, I wouldn't have any
17 objection to that.
18 JUDGE QUALTROUGH: Okay. Any other
19 objections or comments on Exhibits 120 through --
20 MR. WEBER: I'm sorry. I think it's
21 126, Your Honor.
22 JUDGE QUALTROUGH: Any other statements,
23 objections?
24 MR. GROTEN: One, Your Honor. The back
25 page of Exhibit 123, I would object as to its

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1 relevance in this proceeding, given that apparently is
2 a site plan from -- that isn't the application that's
3 sought to be approved in this case.
4 JUDGE QUALTROUGH: Okay.
5 MR. WEBER: Did you want me to respond?
6 JUDGE QUALTROUGH: If you would like.
7 MR. GROTEN: Oh, I didn't realize -- I
8 hadn't seen 121 or 122. Similar objections there, and
9 120. I'm sorry. 120 is fine. 121, 122 and the back
10 page of 123 --
11 MR. WEBER: Well, 120 is excerpts from
12 their air permit application that's at issue today, so
13 that's one of their exhibits.
14 MR. GROTEN: 120 I have no objection to.
15 JUDGE QUALTROUGH: Okay.
16 MR. WEBER: 121 and 122, of course,
17 show -- are excerpts from applications that show
18 emissions points at different locations than what they
19 modeled and are presenting to you as true and correct
20 in this proceeding, but which they have represented as
21 true and correct to other agencies in other
22 applications.
23 The location of the site plan dictates
24 the location of emission points. The location of
25 emission points are the points from which air

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1 emissions are expelled. Then the dispersion modeling
2 predicts maximum ground-level concentrations or
3 ground-level concentrations of each of the pollutants
4 emitted, and that's obviously and clearly relevant in
5 this proceeding.
6 JUDGE QUALTROUGH: And I assume you're
7 going to use these on cross.
8 MR. WEBER: Your Honor, I would
9 probably -- yeah, probably, but I would also ask the
10 Court just to take judicial notice of public records
11 filed by the applicant into the public record.
12 JUDGE QUALTROUGH: All right.
13 Exhibits 120 through -- I'm sorry -- 126, they're
14 admitted. We've noted that you need to prove up
15 through the witness on whether this is -- the plastic
16 overlay is actually in the application -- represents
17 the final depiction in the application.
18 MR. WEBER: 123. Correct?
19 JUDGE QUALTROUGH: 123.
20 MR. WEBER: Thank you, Your Honors. I
21 appreciate the indulgence.
22 (Exhibit EDF Nos. 120 through 126
23 admitted)
24 JUDGE QUALTROUGH: Sure. I hate to ask
25 it. Do we have any other preliminary matters? I

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1 think Sierra Club does.
2 MS. MANSURI: Your Honor, I'm sorry. We
3 do have a couple of preliminary matters. I think
4 these may be less controversial, but we'll see.
5 In order to properly preserve what we
6 think may be appellate points, Sierra Club would like
7 to get clarification on a couple of prior evidentiary
8 rulings. We're not asking for them to be
9 reconsidered. We would just like to get some things
10 clarified on the record.
11 JUDGE QUALTROUGH: Okay.
12 MS. MANSURI: The first one is with
13 regard to IGCC. On December 23rd, 2009 -- and I'll
14 step you through the filings and make clear our
15 request.
16 On December 23rd, 2009, Sierra Club and
17 the No Coal Coalition responded to your Order No. 11,
18 which was rulings on objections to the prefiled
19 testimony. Part of that response included a request
20 for clarification of what are, we believe, conflicting
21 rulings in Order No. 11 with regard to Bill Powers'
22 IGCC testimony.
23 And it also included a request that if
24 it's indeed the intention to strike the IGCC
25 testimony, which we understand it is, and that's based

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1 on a lack of relevance, then IGCC testimony be
2 stricken from the record for all parties. And if
3 you'll allow, I have the documents to point exactly to
4 the conflict we're concerned about.
5 JUDGE QUALTROUGH: Okay.
6 MS. MANSURI: So the first document in
7 the packet, you'll just see it's the Sierra Club's
8 response, and I'll point you to Page 9 that includes
9 the request for clarification. The third document
10 should be Order No. 11, and if you flip to Page 3 of
11 that order, there's a chart that's White Stallion's
12 objections to Sierra Club evidence. And there appear
13 to be two line entries for Sierra Club Exhibit 200,
14 Line 41 -- sorry -- Page 41, Line 10 through Page 47.
15 JUDGE QUALTROUGH: I'm sorry. Can you
16 give me the page of 11 again? Sorry to interrupt.
17 MS. MANSURI: Page 3, Fax Page No. 4.
18 JUDGE QUALTROUGH: Okay.
19 MS. MANSURI: So about a fourth of the
20 way down that chart, there are two entries for
21 Exhibit 200, Line 41 -- I'm sorry -- Page 41, Line 10,
22 through Page 47, Line 21. That objection is
23 sustained.
24 If you skip down two lines, there
25 appears to be the same line numbers, and that

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1 objection is overruled. I've also included White
2 Stallion's objections, and it appears that -- sorry.
3 Did you find those entries in the chart? Okay.
4 If you then turn -- it takes a little
5 bit of walking through. If you turn to the
6 applicant's objections, there's an objection in the
7 body of their motion at Page 5 of 25 to these sections
8 based on relevancy.
9 Then, again, at the back -- I assume for
10 convenience -- they included a table that we've all
11 used, and the same objection appears again; Line 41 --
12 Page 41 through Page 47. Perhaps that's why there
13 were two entries, but we would just like to get
14 clarification for both of the entries to be the same.
15 JUDGE KEEPER: Help me with the two
16 entries. I'm on Page 18 of 25 of applicant's
17 objections to protestants' prefiled testimony.
18 MS. MANSURI: Sure.
19 JUDGE KEEPER: Is that where you need me
20 to be?
21 MS. MANSURI: It is. And there's only
22 one entry for the page and line numbers that we're
23 discussing. In the order, however, Order No. 11,
24 there are two entries in the chart --
25 JUDGE KEEPER: Right.

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1 MS. MANSURI: -- that appear to
2 correspond to the single relevancy objection.
3 JUDGE KEEPER: Okay.
4 JUDGE QUALTROUGH: Okay. We think
5 you're right. The IGCC testimony is out, but we're
6 going to look at this again. We're going to sit -- at
7 the break, maybe over lunch, we'll go and look at this
8 order again and see why we've got two entries on that
9 order.
10 MS. MANSURI: Okay. And if -- when
11 you're looking at that, in your packets, I've also
12 included some excerpts from the applicant's exhibits
13 that will be offered today that address IGCC, and so
14 the second part of our clarification to Order No. 11
15 was that if, indeed, the ALJs' ruling is to strike
16 IGCC testimony from the record and from Mr. Powers'
17 testimony based on relevancy, that it likewise be
18 stricken across the record, and I believe I've
19 identified the two places where it appears in the
20 application and provided those documents.
21 JUDGE QUALTROUGH: Are you moving now?
22 Are you filing an objection now? Because I don't
23 think we have one on the record yet, do we, which
24 would be in a weird position for you to be in but --
25 MS. MANSURI: It's an odd position, and

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1 what I'm asking for is -- it is Sierra Club and the No
2 Coal Coalition's position, I think as you know, that
3 IGCC testimony is absolutely relevant.
4 I would also note that the Executive
5 Director did not object to it, except with regard to
6 carving CO2 issues related to IGCC. If the Judges
7 believe it is not relevant, then, yes, we would object
8 to other parties being able to present information on
9 it. We never objected to it because we didn't think
10 it was objectionable evidence.
11 JUDGE QUALTROUGH: Any response,
12 Mr. Groten, Mr. Lee?
13 MR. LEE: Yes, Your Honor. On both
14 points, I think you'll find -- and my conclusion on
15 this Order No. 11 is that it's simply a typo. That's
16 my conclusion about it.
17 But as for these other parts of our
18 application that discuss IGCC, we've said in one of
19 our filings that if you uphold the objection on IGCC,
20 then we don't mind these sections being excluded.
21 These are not part of the BACT analysis that was
22 provided for informational purposes in the
23 application. We don't mind them being stricken.
24 JUDGE QUALTROUGH: Okay.
25 MR. GROTEN: I'm sorry to interject

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1 here. Do we have a specific motion as to what Sierra
2 Club wishes to strike? Because we haven't seen that
3 yet.
4 JUDGE QUALTROUGH: I think it's the --
5 correct me if I'm wrong. I think their motion to
6 strike is the information contained in this packet
7 that they just provided.
8 MS. MANSURI: That's correct. And I can
9 walk you through specifically what it is.
10 JUDGE QUALTROUGH: I don't think that's
11 necessary. Do you, Mr. Groten, Mr. Lee?
12 MR. LEE: No. It's just that there's,
13 you know, page -- White Stallion Exhibit 102, Page 161
14 of 200, which is the first page here. I haven't read
15 it all, but I don't think there's any discussion of
16 IGCC on that page. I mean, it would just be --
17 MS. MANSURI: There is.
18 MR. GROTEN: That's the problem.
19 MR. LEE: We need to identify.
20 MS. MANSURI: I can identify it for you.
21 JUDGE QUALTROUGH: Okay.
22 MS. MANSURI: For White Stallion
23 Exhibit 102 at Page 161, starting with the third
24 paragraph, the first full sentence discusses IGCC
25 specifically, and then moving to Page 162, starting at

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1 Application Section, E.2.1, there is a section on
2 IGCC, and it continues to Page 163 after Nos. 1, 2, 3
3 and 4, right before a discussion of PC boilers. So we
4 would ask that all of that information be stricken.
5 I include White Stallion Exhibit 104
6 because I believe changes were made to the application
7 after the original submittal, and pages were replaced.
8 And so Pages 1 and 2 of 70 of Exhibit 104 discuss the
9 process of presenting additional information in TCEQ,
10 and then one of the pages that is being replaced
11 includes a page on IGCC. It's Page 66 of 70 of 104,
12 and that page, as I understand it, replaces Page 163
13 of 200 in Exhibit 102. So we would ask that in
14 Exhibit 104 on Page 66, that everything from "and" at
15 the top of the page to the end of No. 4 be stricken,
16 and I can --
17 JUDGE QUALTROUGH: I'm sorry. Did you
18 say 104?
19 MS. MANSURI: Exhibit 104, yes, on
20 Page 66.
21 JUDGE QUALTROUGH: There it is. It's
22 the last one. Okay.
23 MS. MANSURI: If Mr. Lee would like
24 to -- we can talk about this off the record.
25 JUDGE QUALTROUGH: Yeah. Let's do that

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1 after lunch, or during lunch you-all -- everybody
2 will -- we'll look at it, you-all look at it, you look
3 at it, everybody.
4 MR. LEE: Okay.
5 JUDGE KEEPER: And perhaps one approach
6 might be if there's an agreement amongst the parties
7 that the applicant might substitute pages with
8 perhaps, you know, strike-outs or something to reflect
9 the corrected version.
10 MR. LEE: Okay.
11 JUDGE QUALTROUGH: You-all talk about
12 that. Okay?
13 MS. MANSURI: Okay.
14 JUDGE QUALTROUGH: Anything else.
15 MS. MANSURI: There is one other thing
16 and this is the last thing. We have a formal motion
17 again in an effort to make sure that we've properly
18 preserved all of our potential appellate points and
19 for a clean record.
20 We would request classification of Order
21 No. 12 with regard to protestants' requests for a
22 commission, and I have that motion in written format,
23 and I will pass it out to everyone.
24 (Brief pause)
25 MS. MANSURI: At this time --

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1 JUDGE QUALTROUGH: Go ahead,
2 Ms. Mansuri.
3 MS. MANSURI: I'll try to make this
4 brief.
5 JUDGE QUALTROUGH: I almost said Mann,
6 and I knew that was wrong.
7 MS. MANSURI: Dangerously close.
8 JUDGE QUALTROUGH: It is.
9 MS. MANSURI: Sierra Club and No Coal
10 Coalition request on the record that Your Honors
11 provide a basis for the denial of protestants' request
12 for commission to take deposition. We understand that
13 Your Honors have been previously briefed on this
14 issue.
15 However, as you'll hear in this
16 proceeding, like Sierra Club's expert, Mr. Powers,
17 representatives of the applicant have also spoken to
18 Haldor Topsoe back on December 8th regarding the
19 feasibility of the tail-end SCR, yet this information
20 wasn't provided to protestants until January 22nd.
21 And a number of relevant events occurred
22 between the time that they had that discussion and the
23 time that we requested the deposition. So I think
24 you'll see, as the hearing goes forward, that this was
25 a very important issue to Sierra Club's case, and,

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1 therefore, we're asking for a basis for the denial.
2 JUDGE QUALTROUGH: Do you have a copy of
3 your original request for a commission?
4 MS. MANSURI: I do.
5 JUDGE QUALTROUGH: And, again, we'll
6 look at this at lunch. That's going to require going
7 back and looking at the file.
8 MS. MANSURI: I understand. And if you
9 would like, I have the original request. I have the
10 applicant's response and Sierra Club and No Coal
11 Coalition's reply. Would you like all three?
12 JUDGE QUALTROUGH: That would be great.
13 Can you tell me why you haven't made this motion
14 before the hearing today? If we could have that on
15 the record --
16 MS. MANSURI: Sure; two reasons. One,
17 we only recently became aware of the increased
18 interactions with Haldor Topsoe. I can walk you
19 through a timeline of that, if you would like. But,
20 secondly, today was the start of the hearing on the
21 record, and we just want the bases for some of the
22 previous rulings to be clear for the appellate record.
23 We're not asking you to reconsider.
24 JUDGE QUALTROUGH: No, I know. But you
25 said you got new information. I guess this was after

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1 we denied your request?
2 MS. MANSURI: Correct. Correct.
3 JUDGE QUALTROUGH: Okay. So, yeah, give
4 me your other stuff.
5 MS. MANSURI: If other parties would
6 like a copy, I'll be happy to provide it at lunch, but
7 hopefully, everyone has things electronically that was
8 previously provided.
9 JUDGE QUALTROUGH: And for the record,
10 she provided me with a January 8th, 2010 letter
11 regarding Sierra Club and No Coal Coalition's request
12 for a commission to take deposition and draft
13 subpoena; applicant's response; certificate of
14 service, dated January 11th, 2010 and another
15 January 11th letter from Environmental Integrity
16 Project reply to applicant's response.
17 All right. Anything else?
18 MS. MANSURI: No, Your Honor. Thank you
19 for indulging us.
20 JUDGE QUALTROUGH: All right. Well, I
21 have something. Regarding the closing arguments and
22 replies, we would like the parties to get together
23 during this evidentiary hearing off the record, come
24 up with an agreed outline for your closing arguments
25 and for the replies. Does everybody understand?

You know, we've got issues that would help us when we're going through all the paper and looking at the arguments, if everybody is following the same type of outline, same format. Questions? Mr. Weber?

MR. WEBER: I was just going to -- if you would like, once we're done with the hearing, we could submit that outline to you and that way we'll know what all the issues are. That's kind of what we've done recently.

MR. GROTEN: I'm sorry. What was that suggestion?

MR. WEBER: We would get together, try to come up with an agreed outline and then submit it to the Judges before we file our briefs. That's what we did in Las Brisas, and I've done it in other proceedings.

MR. GROTEN: Isn't that what you were asking for?

JUDGE QUALTROUGH: Yeah.

MR. WEBER: Oh, I thought you were wanting it before the last day or something.

JUDGE QUALTROUGH: We just want it sometime. If you want to do it formally as a joint submission after close of the evidence, that's fine,

too.

MR. WEBER: Thank you, Your Honor.

JUDGE QUALTROUGH: But we do want to have the parties submitting closing arguments and responses in a certain -- in the same format. And, of course, you can leave, like, the last section for whatever miscellaneous issues you-all can't agree on.

And just more for curiosity, kind of a scheduling matter, have you-all requested an expedited transcript or have you-all even thought about it?

MR. GROTEN: Honestly, Your Honor, no, but -- and that's something -- if you would like, we can take that up with the court reporter in terms of normal expected time frames, and as you can appreciate, the applicant is always in a hurry to get things done, and if we decide there's value to it, may expedite, if that's all right, Your Honor.

And then we'll have that answer for you before the end of the hearing so that you're able, at that time, to order a briefing schedule consistent with the availability of the transcript.

JUDGE QUALTROUGH: We would like you-all to agree to a hearing schedule -- I mean -- excuse me -- a briefing schedule as well.

MR. GROTEN: I imagine we can do that.

JUDGE QUALTROUGH: I'm just trying to get kind of the scheduling out -- June, July and that kind of thing, what we're looking at.

MS. HANN: Just to interject, as sort of a red flag -- or not a red flag -- a flag that we've not -- protestants are not willing -- we don't think we should have to pay for any expediting of the schedule -- I mean, of the transcript so --

JUDGE QUALTROUGH: Well, you-all talk about that, and that's for a later determination, how those costs will be allocated.

MS. HANN: Sure.

JUDGE QUALTROUGH: Anything else?

(No response)

JUDGE QUALTROUGH: It's eleven o'clock. Are we ready to call our first witness?

MR. GROTEN: Applicant is.

JUDGE QUALTROUGH: All right. Let's go.

MR. GROTEN: Applicant calls Frank Rotondi.

(Exhibit Applicant Nos. 1, 100 through 121, 200 through 216, 300 through 303 and 400 through 402 marked)

PRESENTATION ON BEHALF OF THE APPLICANT

FRANK ROTONDI,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GROTEN:

Q Good morning, Mr. Rotondi. Thank you for your patience.

I'm wondering if in front of you you have a binder with a document marked White Stallion Exhibit 1?

A Yes, I do.

Q Can you identify what Exhibit 1 is?

A Exhibit 1 is my prefiled testimony in this case.

Q As filed with the State Office of Administrative Hearings and the parties in August of 2009?

A Yes.

Q Have you reviewed that testimony since it was filed.

A Yes.

Q Do you have any changes that you would like to make in your testimony?

A No.

MR. GROTEN: Applicant offers White

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1 Stallion Exhibit 1 for the record in this case.
2 JUDGE QUALTROUGH: We've already
3 submitted objections, so we're going to admit Exhibit
4 No. 1.
5 (Exhibit Applicant No. 1 admitted)
6 MR. GROTEN: And I have no further
7 questions for this witness.
8 JUDGE QUALTROUGH: All right. Pursuant
9 to the cross-examination order that we entered
10 previously, it's going to be the Executive Director's
11 turn.
12 MR. HARRISON: Pass the witness.
13 JUDGE QUALTROUGH: Protestants, how do
14 you-all want to handle this. Do you-all care who goes
15 first?
16 MR. WEBER: I believe I'm going first.
17 JUDGE QUALTROUGH: Okay.
18 MR. WEBER: Thank you.
19 JUDGE QUALTROUGH: Go ahead, Mr. Weber.
20 CROSS-EXAMINATION
21 BY MR. WEBER:
22 Q Good morning, Mr. Rotondi.
23 A Hello.
24 Q My name is Tom Weber, and I represent
25 Environmental Defense, Inc.

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1 Tell us, again, your title, please, sir.
2 A I'm president/chief executive officer of
3 White Stallion Energy Center.
4 Q Do you also have a title with Sky Energy?
5 A Yes. I am president/CEO of Sky Energy also.
6 Q What is the relationship between those two
7 entities, sir?
8 A Sky Energy is a part owner of the White
9 Stallion Energy Center project, LLC. That is the
10 entity, and it is also contract -- the developer of
11 White Stallion Energy Center project.
12 Q How many employees does White Stallion have?
13 A White Stallion actually has no direct
14 employees.
15 Q How many employees does Sky Energy have?
16 A Four.
17 Q Does either White Stallion or Sky Energy own
18 or operate any power plants today?
19 A As entities, no.
20 Q Are you -- are those entities affiliated with
21 other entities that own or operate power plants?
22 A No.
23 Q And it's true, is it not, that you
24 independently reviewed the air quality permit
25 application that's the subject of this proceeding?

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1 A Yes.
2 Q And I guess as president and CEO of White
3 Stallion, you are ultimately responsible for ensuring
4 that White Stallion is built to the representations
5 and requirements made in the air quality permit.
6 Correct?
7 A Yes.
8 Q And I think you testified in your prefiled
9 testimony, "Compliance with the draft permit and
10 adherence to the representations made in the permit
11 application is mandatory. We understand these
12 obligations and fully appreciate the consequences of
13 noncompliance." Does that ring a bell?
14 A Yes.
15 Q And would you agree with me that your
16 statement about compliance with representations made
17 in applications would be true of any application filed
18 on behalf of White Stallion?
19 A Yes.
20 Q And it's true, is it not, that White Stallion
21 has filed a 404 -- Section 404 under the Clean Water
22 Act permit with the Army Corps of Engineers? Correct?
23 A That is correct.
24 Q And White Stallion has filed a wastewater
25 discharge permit with the water quality division of

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1 the TCEQ. Correct?
2 A That is correct.
3 Q And as president and CEO, I assume that
4 you're familiar with the applications that have been
5 submitted to all of these agencies. Is that right?
6 A Generally, yes.
7 Q Who is Randy Bird?
8 A Randy Bird is the chief operating officer of
9 the White Stallion Energy Center.
10 Q Are you aware that -- well, it's true, is it
11 not, that Randy Bird certified to the water quality
12 division that the application made to that body was
13 true and correct? Is that right?
14 A I believe that's correct, yes.
15 Q Do you have a set of the exhibits that were
16 admitted this morning, Exhibits 120 through 126?
17 A I guess that's -- it appears so, yes.
18 Q Would you turn to Exhibit 121, please?
19 A Okay.
20 Q And I'll represent to you that these are
21 simply excerpts from the wastewater discharge permit
22 application that White Stallion has filed with the
23 TCEQ.
24 Do you have any reason to believe that
25 that's not the case?

A No. I have not looked it over, but I take you at your word.
Q I'm going to ask you to turn to the signature page. It would be Bates labeled -- it looks like it got cut off of my copy, but it's EDF 019876. It is --
A Yes, I'm there.
Q It's Page 8 at the bottom. Do you see that?
A 876 appears to be Page 9 in this copy.
Q I'm sorry. You're right. You're right; absolutely.
And you'll see Randy Bird's signature there. Is that right?
A Yes.
Q Okay. And the date of this application, as certified by Mr. Bird, is February 19th, 2009. Correct?
A Yes.
Q Is that before or after the air quality permit application was filed?
A After.
Q How long after?
A I don't remember the exact date of the filing of the application of the air quality permit -- some significant period of time.
Q I would ask that you read into the record the

certification made on Page 9, please.
A I take it you mean the first paragraph.
Q Correct. Where it begins, "I, R. A. Bird."
A "I, R. A. Bird, chief operating officer, certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted, based on my inquiry of the person or persons who manage the systems or those persons directly responsible for gathering the information.
"The information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for known violations." Do I need to continue?
Q Yes, sir; if you don't mind, the next paragraph.
A "I further certify that I am authorized under 30 Texas Administrative Code, Section 305.44, to sign this document and can provide documentation and proof of such authorization upon request."
Q Thank you. Are you aware that the site plan

submitted as part of the water quality discharge application filed in February 2009 is different than the site plan that was submitted as part of the air quality application in September 2008?
MR. GROTEN: Objection; form.
A Yes.
MR. GROTEN: Objection; form. I would like to have a -- he asked -- he's assuming facts not in evidence concerning whether or not there are differences between the applications. He didn't ask whether he was aware if there were. He said, "Are you aware that there are."
JUDGE QUALTROUGH: All right. Can you clarify it, please, Mr. Weber?
Q (BY MR. WEBER) Are you aware that there are differences --
MR. GROTEN: I'm sorry.
JUDGE QUALTROUGH: He's asking if he's aware of the differences between the applications.
MR. WEBER: I can insert the word "if."
Q (BY MR. WEBER) Are you aware if there are difference in the site plan submitted as part of the wastewater discharge permit application, excerpts of which are in front of you marked as EDF 121 --
A Yes.

Q -- between that site plan and the site plan submitted to the air quality division?
A Yes.
Q You are aware?
A I am aware.
Q Is it your testimony here today that you intend to amend the wastewater discharge permit application submitted in February 2009?
A It is my testimony that we have submitted a site plan in the air application for this project to which we are fully and completely prepared to build this project in every respect.
We have evaluated -- as part of the additional permitting process for this project, including the wastewater discharge application that we have filed and the 404 application that we have filed, we have looked at additional environmental mitigation.
It is my understanding that in so doing, we have considered, although not adopted, alterations to the plan submitted in this -- in the air application which were represented to me by my staff and consultants to be two things; one, in line with mitigation of environmental impacts on this project on forested wetlands, as well as immaterial changes to the air emission situation, in point of fact,

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1 improvements thereto.
2 I would point out, however, that the
3 only adopted design of this project to date is the one
4 submitted in this air application, and we are fully
5 willing to comply in every respect with construction
6 of this project according to that site layout.
7 Q Well, I'm not sure if you answered my
8 question, but let me restate it.
9 Is it your intention, sitting here
10 today, to amend the wastewater discharge permit
11 application submitted in February 2009?
12 A I am aware of the differences fairly
13 recently, and we will consider such amendment.
14 Q But you'll also agree with me that you have
15 certified as true and correct -- your company, White
16 Stallion Energy Center, has certified, through its
17 chief operating officer, two distinct site plans and
18 certified them as true and correct. Isn't that right?
19 A Actually, I don't agree that that's what has
20 happened here. We have submitted in our air
21 application a site plan for this project. We have
22 worked with the TCEQ, as I understand it, in terms of
23 responding to the information necessary for them to
24 evaluate it. They have provided a draft air permit on
25 that basis.

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1 We have discussed with the Army Corps of
2 Engineers the potential that they would like us to
3 seek additional mitigation of wetlands, which we
4 consider to be an environmental improvement
5 potentially to this project, and we have put in that
6 application a site layout for the project that
7 potentially improves the environmental performance of
8 the project. It has not been adopted by the Corps,
9 nor by us, and we will continue to look at ways to
10 improve this project, that I can tell you.
11 Q Well, let me ask you to turn, then, to EDF
12 Exhibit 122.
13 A Okay. Yes.
14 Q You'll agree with me that this was, as it
15 states in the re line, White Stallion Energy Center
16 Section 10/404 permit application. Correct?
17 A Yes.
18 Q And it was submitted by Whitenton Group,
19 Inc., on behalf and as the agent of White Stallion
20 Energy Corporation. Is that correct?
21 A Yes.
22 Q Excuse me. White Stallion Energy Center.
23 Correct?
24 A Yes, that's correct.
25 Q I'll ask you to turn to the public notice

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1 issued on this application. It is Bates labeled EDF
2 019747.
3 A I'm there.
4 Q At the top, it says, "Permit Application No.
5 SWG-2009-00945. Correct?
6 A Yes.
7 Q Turning back to the first page, this was an
8 application filed on September 23, 2009. Is that
9 right?
10 A Yes.
11 Q Again, this was subsequent to your air
12 quality application. Is that correct?
13 A That's correct.
14 Q And it was subsequent to the wastewater
15 discharge permit application. Is that correct?
16 A I'm going to have to look. Is it 121 that is
17 the wastewater application?
18 Q Excerpts from the wastewater application;
19 yes, sir.
20 A Yes. So this Exhibit 122 was filed
21 subsequent to Exhibit 121.
22 Q And you indicated that you've had discussions
23 with the Army Corps of Engineers concerning a possible
24 mitigation -- wetlands mitigation plan related to this
25 plant site. Is that correct?

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1 A I have not personally had those
2 conversations.
3 Q Representatives of White Stallion have had
4 those conversations?
5 A Representatives of White Stallion have met
6 with the Corps of Engineers, expressed the intent to
7 supply this application, exchanged views or -- that's
8 incorrect -- listened to the Corps' thinking about
9 what their review process would be and filed this
10 application in response to those suggestions, as well
11 as what are the regulations involved.
12 Q Well, in fact, the Corps has issued public
13 notice of your application. Isn't that right?
14 A That's correct. Yes.
15 Q So it's more than discussions. Right?
16 It's an application for which public
17 notice has been issued. Correct?
18 A Yes. We absolutely filed an application, and
19 public notice has been issued.
20 Q And are you aware that EPA has filed
21 public -- has filed comments on this application?
22 A I'm aware of that, yes.
23 Q Are you aware that other state and federal
24 agencies have filed comments on this application?
25 A I am aware of that, yes.

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Q And this application, like the wastewater discharge application, proposes a site plan that's different than the site plan proposed in your air quality application. Correct?
A For consideration, yes.
Q I'll ask you to turn to -- it's plate -- or Figure 4 of 15 in EDF Exhibit 122. That's Bates labeled EDF 019753.
A Yes.
Q And do you see the location that's proposed there for barge unloading?
A Yes.
Q Is that the same location as proposed in the air quality permit application?
A Based on my review this morning, apparently not.
Q And you'll agree with me that barge loading facilities and the conveyors and drop points associated with those are sources of particulate emissions? Is that correct?
A I'm aware of that, yes.
Q As president and CEO of White Stallion, where will the barge unloading facility be located?
A It's currently contemplated and approved to be located in the location where it is represented in

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the application for PSD permit for which we're hearing today.
Q So it's your testimony here that you intend to amend the Section 404 permit on file with the Army Corps of Engineers. Is that right?
A We will consider making such an amendment. That is a process in which we're engaged today.
Q And was that process initiated today as a result of EDF's motion?
A Was -- what process?
Q The process of reconsidering the application on file, both with the Army Corps of Engineers Section 404 wetlands or dredge and fill permit, is that as a result of our motion filed today?
A No.
Q Okay. When did that reconsideration begin?
A We would have filed for amendment of this process, had there been conclusions that it was necessary to amend. The process of considering potential wetlands mitigation in addition to that commenced with our preparation of our 404 permit application.
Q I want to make sure I understand your answer. Is your answer, then, that you had previously contemplated amending your air quality

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permit application prior to today?
A No. That's not what I said.
Q Could you restate your answer then?
MR. GROTEN: To what question?
Q (BY MR. WEBER) Well, let me ask. When did you decide that -- do you plan to amend your air quality permit application that we're here today for?
A I have no such intention sitting here today.
Q Well, I think you've testified that you are considering amending your Section 404 permit application. Is that right?
A We're working on finalization of our -- of the process that would result in a 404 permit. If that requires amendment in order to be compliant with our obligations, we will do -- make such an amendment.
I'm simply telling you that I have no authority to unilaterally amend that permit application. That's subject to the governance provisions of the White Stallion Energy project, and I assure you -- and I assure you -- that we will act fully and compliant with what our requirements are should the air permit application being heard in this process be granted.
Q I believe my question was, when did you first consider the possibility of amending your 404 permit

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application?
A Well, you know, we've considered optimizing the 404 permit application by means of its impacts at least since the public comment period, and we began to look very carefully at the comments. We're working very hard to respond to them with -- you know, the Corps has provided them to us, and our next step in that process is to respond, and that may include amendments to the application.
Q Is it White Stallion's intention to alter the site plan submitted on behalf of White Stallion as part of the Section 404 dredge permit application?
A We may do that. We're considering doing that.
Q Are you considering moving the barge unloading facility?
MR. GROTEN: Moving it relative to what?
Q (BY MR. WEBER) Moving it relative to where it's represented in your air quality permit application.
A No, I have no such intention to do that. We'll consider that, only under the guidelines of the -- you know, the air permit that -- the final air permit, but we have no commitment to change the barge location.

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Q Do you plan to move the barge location as represented in the 404 application?
A That's a possibility, yes.
Q Have you informed the Army Corps of Engineers about that possibility?
A No.
Q The decision to reconfigure the site plan as represented in the air quality permit application and make changes to that site plan as represented in your 404 application was a result of concerns regarding impacts to and mitigation of forested wetlands primarily. Correct?
A Forested wetlands, I guess, is a major consideration. I'm not aware of all the considerations.
Q But you'll agree with me, then, that subsequent to filing your air quality permit application, White Stallion determined that they ought to mitigate impacts to wetlands, specifically forested wetlands, and thereby submitted a different site plan to the Army Corps of Engineers. Correct?
A We have considered, but the fact is that, you know, we've submitted a site plan to the Army Corps of Engineers that is a prospective means to mitigate certain of the wetland impacts.

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Q Sir, you've done more than consider, haven't you?
Can you turn to Figure 3 of 15 on EDF Exhibit 122, EDF Bates labeled 019754?
A Yes, I have it in front of me.
Q The areas cross-hatched in orange, those are forested wetlands. Correct?
A I believe that's the case.
Q Do you see in the legend where it says "forested wetlands"? If you turn it landscape, it would be in your lower right-hand corner.
A Yes.
Q Is the orange cross-hatch area -- are those forested wetlands?
A Yes.
Q Isn't it true that White Stallion has moved the material handling portion of the proposed plant northward in order to avoid forested wetlands along the southern boundary -- excuse me -- the southwestern boundary of your property?
A Would you please ask it again?
Q You bet. It's true, is it not, that White Stallion has moved the material handling portion of its proposed source northward in order to avoid impacts to forested wetlands located on the south and

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southeast corner of your property? Is that right?
A For consideration, yes.
Q Well, you've submitted it in an application to the Army Corps of Engineers. Correct?
A That is correct.
Q You made a representation that as the president and CEO of White Stallion you stand by. Correct?
A It sounds like you're suggesting that I have committed to a site plan that moves the material handling for mitigation of forested wetlands, and I have made no such commitment.
Q But you at least made that representation through the site plan to the Army Corps of Engineers. Correct?
A We made representation that that is among the options for mitigation.
Q Well, you'll agree with me, will you not, that the proposed site plan that was submitted to the air permitting division as part of your air quality application presents a reasonable alternative to the site proposed to the Army Corps of Engineers?
A The Army Corps of Engineers permit application was not contemplated at the time of creation of the site layout for the air permit

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application that took place months before. It is the only approved design by the development committee of this project.
Q Which one is? I'm sorry.
A The one that is in the air application.
Q So are you saying that the application submitted to the Army Corps of Engineers has not been approved by White Stallion management?
A It has not been adopted as the final design of this project. That's correct.
Q Do you recall on what date White Stallion's management team or board adopted as the final plan the site plan submitted as part of the air quality permit application?
A I don't remember the precise date, sometime before the application was submitted.
Q In 2008?
A Yes.
Q And when you say "the application," you mean the air quality permit application?
A Correct.
Q So it was approved by White Stallion's management committee or board. Is that right?
Is it the board that approves it?
A Development committee is the formal name of

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1 it, yes.
2 Q So it was approved by the committee?
3 A Yes.
4 Q But then you subsequently certified to the
5 air -- excuse me -- the wastewater -- the water
6 quality division of the TCEQ a site plan that had not
7 been approved by the committee. Is that correct?
8 A That is correct. The general layout of this
9 project was approved once. It was not actually
10 approved in the context of the air application. It
11 was used for that purpose subsequent. There has never
12 been an adoption of a different one, ever.
13 Q Was Randy Bird not acting on behalf of White
14 Stallion Energy Center?
15 A He was acting on behalf of White Stallion
16 Energy Center.
17 Q And are your consultants acting on behalf of
18 White Stallion Energy Center?
19 A Yes, they are.
20 Q You take certifications to the TCEQ
21 seriously?
22 A Yes, sir.
23 Q You would agree that the site plan submitted
24 to the Army Corps of Engineers in 2009, that you may
25 now alter, that that was a practicable alternative to

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1 the site plan submitted to the air quality division in
2 September 2008. Is that right?
3 A I think that's a fair statement.
4 Q Thank you, Mr. Rotondi.
5 MR. WEBER: I'll pass the witness.
6 JUDGE QUALTROUGH: Sierra Club?
7 CROSS-EXAMINATION
8 BY MS. MANN:
9 Q Good morning, Mr. Rotondi.
10 A Hello.
11 Q My name is Christina Mann. I'm with the
12 Sierra Club and the No Coal Coalition.
13 You testified earlier that Randy Bird is
14 the chief operating officer of White Stallion Energy
15 Center. Is that correct?
16 A Yes.
17 Q And you are the CEO and president of White
18 Stallion Energy?
19 A That's correct.
20 Q What has Mr. Bird's role been in the WSEC
21 development process?
22 A You mean White Stallion?
23 Q Yeah, White Stallion Energy Center's
24 development process.
25 A Well, Mr. Bird is responsible for a variety

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1 of things in this process. He is the -- provides
2 oversight and advice to the development committee
3 related to technical matters. He is an engineer by
4 training. He has advised and conducted activity
5 related to permit application preparation. He also
6 has been responsible for working with the public in
7 Bay City, and he has a variety of other
8 responsibilities.
9 Q How does his role compare to your role, thus
10 far, in this process?
11 A Well, I have oversight responsibility for the
12 entirety of the development of this project. That's
13 the permitting process, but it involves a variety of
14 other large activities, including the procurement of
15 construction -- a construction construct for the
16 project, marketing electricity, procurement of fuel, a
17 variety of other things that are all major activities.
18 I have responsibility broadly for all of those.
19 Q So your responsibility is broader than
20 Mr. Bird's responsibility. Is that correct?
21 A Generally, that's a fair statement.
22 Q Does Mr. Bird have a role in Sky Energy?
23 A Yes. He has the same title in Sky Energy,
24 and Sky Energy is a project developer. So essentially
25 the role that Randy plays on White Stallion is very

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1 nearly the identical role he plays as a member of the
2 Sky Energy development team.
3 Q Can you please explain the business
4 relationship between White Stallion, Sky Energy and
5 Spark Energy?
6 A Yes. Spark Energy is the retail electric
7 brand name associated with a private investment group
8 based in the Houston area. Spark Energy has a company
9 that shares the same ownership as the partner in
10 development of Sky Energy or -- excuse me -- of White
11 Stallion Energy. So essentially Spark Energy is the
12 group that is the partner in development of this
13 project.
14 Q Are they a financial partner only or are they
15 providing technical and development assistance?
16 A They provide a variety of assistance, in
17 addition to financing.
18 Q Are they the only financial partner in
19 this -- to White Stallion Energy or Sky Energy in
20 development of this particular project?
21 A Yeah. They're a related company -- the
22 company that is related to Spark -- I'm saying this
23 because they're actually not joint -- okay.
24 Spark Energy and a company called Haris
25 are two entities that are owned by the same

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1 shareholder. This is a private investment group in
2 the Houston area. Through the Maris vehicle, they
3 supply financing -- development financing.
4 Spark Energy group also provides a
5 variety of market analysis, of financing advisorship
6 and other expertise to the development process.
7 Q Is Spark Energy going to be the retail
8 provider of any energy developed or generated?
9 A That's undetermined at this point in time.
10 They have an option to be such.
11 Q They have a sort of -- they have the first
12 option to do that?
13 A They have a right to do that, yes.
14 Q I think you testified earlier that White
15 Stallion -- I'll rephrase.
16 Which entity did you testify earlier had
17 four employees?
18 A Sky Energy.
19 Q Who are those employees?
20 A Myself, Randy Bird, Kathy Morgan, Jeff
21 Beicker.
22 Q What was that last name?
23 A Jeff Beicker.
24 Q So Sky Energy has four employees. White
25 Stallion has no employees. Is that correct?

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1 A That's correct. Services to White Stallion
2 are provided by Sky Energy employees by a variety of
3 consultants and on a consulting basis by members of
4 the Spark Energy team.
5 Q Okay. You mentioned a White Stallion
6 development committee. Is that correct?
7 A That's correct.
8 Q And is the development committee -- how is
9 the development committee associated with White
10 Stallion?
11 What is the relationship between the
12 development committee and White Stallion Energy
13 Center?
14 A The development committee is the governing
15 body representing the ownership interests in White
16 Stallion. So every material decision about White
17 Stallion is made by the development committee.
18 Q How many people are on the development
19 committee?
20 A Four.
21 Q Are they the same four employees for Sky
22 Energy?
23 A No.
24 Q Can you tell me who the four people are on
25 the development committee?

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1 A This is getting very close to confidential
2 information.
3 MR. GROTEN: Your Honor, if -- I'll
4 object to this as being of very questionable probative
5 value in these proceedings, and we have commercial
6 concerns about -- that Mr. Rotondi has about sharing
7 this information so --
8 MS. MANN: I'm comfortable discussing
9 the development committee as an entity without moving
10 to individuals on it at this point. If later I need
11 to revisit it --
12 JUDGE QUALTROUGH: Go ahead.
13 Q (BY MS. MANN) The development committee is
14 the entity -- what are the responsibilities of the
15 development committee as it relates to the White
16 Stallion Energy Center's development?
17 A It is the governing body that makes every
18 material decision about that development.
19 Q So do they make -- the development committee
20 makes a decision about the site plan, for example. Is
21 that correct?
22 A The development committee would make a --
23 yeah, they would approve a site plan; yes.
24 Q And as you testified earlier, the development
25 committee did approve a site plan. That's correct?

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1 A Yes.
2 Q And at the time the development committee
3 approved the site plan -- in what time frame again?
4 A I'm not sure exactly, prior to the submittal
5 of the air permit application.
6 Q At that time did the development committee
7 have an understanding of what the site plan would be
8 used for?
9 A A general understanding of that, yes.
10 Q And what was the general understanding?
11 A That it would be used for a variety of
12 things. Among them, it would be the site plan
13 initially used in permit application -- in the air
14 application, that it would also be a basis upon which
15 our consultants could evaluate a variety of technical
16 aspects of the project for reasons other than the air
17 application.
18 Q Did the development committee -- had they
19 received -- I say "they" -- had it received
20 information about what kind of application would be
21 required to be submitted on behalf of White Stallion
22 Energy at the time a site plan was developed?
23 A Well, I don't recall sort of a documented
24 list of permit applications, but the members of the
25 committee have all been through power plant

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1 development projects before. So there was certainly
2 general awareness of the types of applications that
3 would be required.
4 Q And how are you aware of the kinds of
5 decisions and information that the development
6 committee makes and considers?
7 How are you aware of that? Are you a
8 member of the development committee?
9 A Yeah. I thought we had passed the issue
10 of --
11 Q Well, I believe it's relevant because
12 Mr. Rotondi earlier testified about timelines with
13 these sites plans.
14 A That's fine. I'm a member of the development
15 committee.
16 Q So as a member of the development committee,
17 do you have -- when did you become aware of the number
18 of applications that would have to be submitted on
19 behalf of White Stallion?
20 A Well, I've been in the power plant
21 development business for many years. I came into this
22 project with general awareness of that.
23 Q Okay. And so at that point, you understood
24 that the site plan would be necessary to provide to
25 different agencies to help them make a decision on an

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1 application for a different environmental permit?
2 Shall I rephrase that?
3 A Please.
4 Q A site plan -- in your experience, did you
5 have an understanding that a site plan would be
6 required to be submitted on behalf of White Stallion
7 for the air permit application and for the wastewater
8 application and for any other necessary applications?
9 Did you understand that?
10 A You know, my clearest understanding is that
11 there needed to be such a site plan for the air
12 application. I have been through lots of air
13 permitting activities in the past and understood the
14 nature of design for the purpose of determining
15 emission points for air modeling.
16 It's not likely that at that time I was
17 contemplating, you know, other issues associated with
18 site planning because that was the focus of the effort
19 at that time.
20 Q Okay. And you testified earlier -- and I
21 think that EDF's exhibits agree with this -- that
22 Mr. Bird was the representative of White Stallion who
23 signed the applications on all three of the
24 applications we've talked about today. That would be
25 the 404 permit, the wastewater permit and the air

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1 permit. Is that correct?
2 A I believe that's the case, yes.
3 Q And did Mr. Bird know whether or not he was
4 submitting the same site plan that the development
5 committee had approved each time?
6 A You know, I can't speak for him.
7 Q Sure. Well, would he have any firsthand
8 knowledge of what the development committee decided
9 regarding a site plan -- an approved site plan?
10 A You know, I believe he would. Again, I can't
11 speak directly for him, but I believe he had
12 knowledge.
13 Q Was he -- did he consult with development --
14 the development committee or was he a member of the
15 development committee when the site plan was approved?
16 A I believe he was aware of the site plan when
17 it was approved.
18 Q And I don't think that quite answered my
19 question.
20 But did he consult with the development
21 committee, or was he a member of the development
22 committee when the site plan was approved?
23 A Yes.
24 Q Yes to both?
25 MR. GROTEN: You asked one or the other.

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1 Q (BY MS. MANN) Okay. Was he a member of the
2 development committee when the site plan was
3 approved -- Mr. Bird?
4 A Yes.
5 Q Mr. Rotondi, if White Stallion Energy Center
6 is ultimately constructed, who will operate the power
7 plant?
8 A Under the development agreement for the
9 project, Sky Energy is responsible for the operation
10 of the plant.
11 Q Who is that development agreement between?
12 A Maris and Sky Energy.
13 Q So would Sky Energy be identified as the
14 operator of White Stallion Energy Center?
15 A Sky Energy is responsible for building an
16 organization for the purposes of -- of permanent
17 operations of the project.
18 Q If we flash-forwarded four years from today
19 and this facility has been constructed, employees at
20 what corporation are going to be responsible for
21 operations -- for day-to-day operations at the
22 proposed White Stallion Energy Center?
23 A I would say from the standpoint that I look
24 at it today, granted that that is five or six years
25 out into the future, there would be -- White Stallion

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1 Energy Center itself will have most of the operating
2 employees.
3 The management will be provided by a
4 contract operator of the project. This is
5 hypothetical. This is essentially the business plan
6 as of this time. We have had a number of generic
7 expressions of interest in playing that role on the
8 part of subsidiary companies of enterprises that
9 operate some hundreds of thousands of megawatts of
10 power generation plants.
11 So the operating capabilities that will
12 be brought to bear as a requirement of the financing
13 of this project will be industry-leading resumes of
14 all of the key operating people involved.
15 Q So if White Stallion Energy Center is granted
16 this air quality permit and the permit is in their
17 name -- in its name, who -- will the permit continue
18 to be in White Stallion Energy Center's name if all of
19 these changes occur with who may or may not be
20 actually operating the facility?
21 Is the permit going to remain in White
22 Stallion Energy Center's name, no matter who is
23 operating the facility?
24 A Yes.
25 Q Who will own the equipment in the -- in that

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1 actual tangible facilities at White Stallion Energy
2 Center?
3 A White Stallion Energy Center will.
4 Q Okay. So that I understand, White Stallion
5 Energy Center will own the equipment, but another
6 corporation will likely be in charge of operations.
7 Is that correct?
8 A As -- under a contract that would be approved
9 by the ownership and lending structure of the project.
10 Q Okay. And it's correct that White Stallion
11 Energy Center does not own the land on which the
12 facility is proposed to be constructed. Right?
13 A We hold an option to purchase the land.
14 Q And is that option to purchase with any of
15 the -- with Sky or Spark Energy or is it with a non --
16 is it with a landowner that hasn't been mentioned yet?
17 A I'm sorry?
18 Q Who is the option to purchase with?
19 A The option to purchase was taken by a sister
20 company of Maris and assigned directly, via a legal
21 instrument, to White Stallion Energy Center, so White
22 Stallion Energy Center holds the option.
23 Q Who do they hold the option to buy the land
24 from?
25 A That's a confidential business -- I guess I

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1 would say that the landowner, however, and the site
2 plan are a matter of public record.
3 Q Okay. So making sure I understand, regarding
4 the air quality application, once this facility is
5 constructed, who will be responsible for compliance
6 with representations made in the application, as well
7 as the specific requirements of any final air quality
8 permit, who individually or what entity?
9 A The contract operator will have very specific
10 fiduciary obligations, including a portion of their
11 compensation at stake associated with compliance with
12 the permit obligations in full. We do not -- we have
13 not executed such a contract. It's too early in this
14 process to do so, but that will be backed with the
15 full faith and credit of the permit owner, which will
16 be White Stallion Energy Center, its owners and
17 financiers as well as the contract operator.
18 Q Okay. So is the short answer to that you
19 don't know yet who will be responsible for compliance
20 with the draft permit and representations in the
21 permit application?
22 A You mean in terms of individual people?
23 Q Who in terms of individual people or entity.
24 A Yeah. We are in the process to --
25 Q You're in the process of making that

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1 decision?
2 A Yeah. That decision has not been finalized.
3 Q So we don't have the opportunity to see what
4 the operator's compliance history is or what their
5 background is in operating power plants at this point.
6 Is that correct?
7 A Yes. And I would argue that I've never seen
8 a power plant project where you would know that at
9 this juncture.
10 MS. MANN: I'm doing to object to that
11 as nonresponsive. You can always follow up with your
12 counsel.
13 JUDGE QUALTROUGH: I'm going to overrule
14 your objection. Go ahead with your questioning,
15 please.
16 MS. MANN: Okay.
17 Q (BY MS. MANN) And does your signature appear
18 on any of the forms submitted to TCEQ or any other
19 agency regarding any applications by White Stallion
20 Energy Center?
21 A My personal signature?
22 Q Correct.
23 A You know, I'm not sure that I recall that.
24 It's not impossible though.
25 Q Do you recall it specifically for this air

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1 permit application, whether or not you've signed any
2 form or signed the application submitted to TCEQ?
3 A You know, I don't recall.
4 Do you have an example? I don't recall.
5 Q Okay. What is your position regarding
6 whether or not White Stallion Energy Center has to own
7 the property at all?
8 Is it possible that White Stallion could
9 have a lease on the property to build the facility?
10 A I don't know whether it's possible. It's
11 never contemplated to lease it so --
12 Q What fuels is White Stallion planning on
13 combusting in the proposed CFBs?
14 A Fuel definition is included in the
15 application. It's intended to include --
16 Q I'm sorry. I misunderstood that first word.
17 It's --
18 A Is intended to -- I apologize. Are you
19 having a difficult time hearing?
20 Q A little bit.
21 A I'm sorry. Is it better if I'm closer?
22 Q Yes.
23 A Thank you. I'm sorry. I apologize. Could
24 you ask it again?
25 Q Sure. I asked what fuels is White Stallion

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1 planning to combust in the CFB?
2 A Yeah. The two fuels basically are identified
3 in the application there to include petroleum coke and
4 Illinois Basin coal.
5 Q And at this time, do you have any contracts
6 with providers of petroleum coke?
7 A No.
8 Q Do you intend -- strike that.
9 How do you define the local area as it
10 relates to where you might get your petroleum -- where
11 White Stallion might procure its petroleum coke?
12 A The general answer to that is the Gulf Coast,
13 the refineries that have access to rail or water
14 transport of pet coke to the site. That ultimate
15 determination of that will be the competitiveness of
16 offers for the fuel.
17 Q And are you talking about the entirety of the
18 Gulf Coast from Texas to Florida?
19 A Oh, not really. I would say it's the Texas
20 Gulf Coast, Louisiana Gulf Coast, Alabama primarily.
21 Q And you have no idea which entity might be
22 providing White Stallion petroleum coke if
23 constructed?
24 A No, it's not possible to contract this far in
25 advance for that. Refineries only make their

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1 production plans of pet coke sort of on a year-to-year
2 basis.
3 Q Have you conducted any studies or seen any
4 research about any -- whether or not new sources are
5 going to become available in time for -- or at a time
6 where White Stallion might be able to use the
7 petroleum coke?
8 A We have kept data and have a general
9 understanding of the amount of pet coke that is
10 produced a day. There are projects to add to coke
11 manufacturing capacity in the Gulf Coast. We do
12 not -- we are not privy to the sort of status of those
13 projects, although there are announced projects for
14 that purpose.
15 We do our best to keep in touch with
16 them, and we have had direct conversations with a
17 number of potential suppliers, such as ConocoPhillips,
18 ExxonMobil.
19 Q Have you had conversations with anyone at
20 Shell or Motiva?
21 A I have not. It's actually possible that
22 Spark has.
23 Q If local -- and by "local," I'm using your
24 definition of the Gulf Coast -- petroleum coke is not
25 available, is there somewhere else White Stallion

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1 might procure pet coke?
2 A Not to my knowledge.
3 Q Okay. How will the pet coke arrive to White
4 Stallion Energy Center?
5 A It depends on a variety of factors; its
6 source location, what are the logistics for such
7 delivery. It is possible that it would be delivered
8 by barges. It is possible it will be delivered by
9 railcars. Those are the two primary modes.
10 Q Is there another mode besides rail or
11 barging?
12 A Realistically, no. I mean, we considered
13 truck haulage, but that's logistically very difficult
14 so it's unlikely.
15 Q And you didn't provide any information to
16 TCEQ regarding possible truck hauling?
17 A No, because it's not feasible.
18 Q Did you provide information to TCEQ about
19 rail traffic?
20 A You know, I'm not 100 percent sure what
21 aspects of the rail traffic was included in the
22 information.
23 Q Okay. Once the pet coke -- well, assuming
24 the pet coke arrives by barge, how will it be
25 stored -- how will it be transferred from the barge

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1 and stored at somewhere on the 1,200-acre site?
2 A Well, I'm -- as you know from my resume that
3 I provided you, I'm not our project engineer. I have
4 a general understanding. We are building -- we are
5 proposing to build, I should say, an unloading
6 facility to take pet coke from barges. There will be
7 a mechanical means of accomplishing that. It will
8 then be transferred via -- as I understand it,
9 conveyed to storage areas.
10 Q And is that the extent that you understand
11 what the storage areas would be like?
12 A Yes. I mean, I'm not the designer of them.
13 I have a general understanding of what their purpose
14 is and what they do.
15 Q Okay. Can you explain, to the best of your
16 understanding, how coal will be transported to White
17 Stallion?
18 A Again, the two primary modes of transport of
19 coal would be barge transport on the inland waterway
20 system, and the other would be mainline railroads,
21 both of which have capability to deliver coal onto
22 this site.
23 Q Okay. And are the retail -- do the railroads
24 exist today?
25 Do the rail lines that White Stallion

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1 might use exist today?
2 A Yes.
3 Q And the same question about the coal. Do you
4 know how it will be transferred from either the barge
5 or the rail line to its storage facility?
6 A My answer is really very much the same. You
7 know, the rail, it will be delivered via rail, will be
8 unloaded and transported.
9 Q Will the pet coke and the coal be segregated
10 while it's in storage?
11 A That's my understanding.
12 Q Do you believe White Stallion Energy Center
13 is restricted in any way in how much pet coke versus
14 coal it chooses to burn in the CFBs?
15 A Well, as a practical matter, there are
16 limitations of use of both. I mean, we would -- for
17 example, it's impossible -- it's likely impossible,
18 from what we understand, to procure coal from Illinois
19 or Kentucky to be delivered one trainload order at a
20 time.
21 There would have to be some baseload
22 commitment of capacity over time in order for the
23 railroads to be prepared to participate in deliveries,
24 and so that's a limitation. I would assume the same
25 situation exists for pet coke.

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1 Q But as far as your understanding of what
2 White Stallion would be allowed to burn, 100 percent
3 coke versus zero percent coal or any range in between
4 there, do you have an understanding if there are any
5 restrictions for White Stallion on what they're
6 allowed -- what percentages of pet coke versus coal
7 they're allowed to burn?
8 A Do you mean under the --
9 Q Under -- either in the representations that
10 White Stallion has made in the application or in the
11 draft permit that's under consideration.
12 A Yeah. I think the answer to your question is
13 yes, if I understand it.
14 Q So I want to make sure we're on the same
15 page. You believe that White Stallion is restricted
16 in how much pet coke versus coal it is allowed to
17 burn?
18 A No. I'm glad you clarified. I do not
19 believe it is restricted.
20 Q So it's your understanding that the permit
21 would allow 100 percent pet coke or 100 percent coal
22 to be burned at any one time?
23 A That is my understanding.
24 Q Earlier you mentioned Illinois coal, and then
25 I thought I heard you mention Kentucky coal in

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1 response to one of your earlier answers. Do you
2 recall that?
3 A Yes, I recall that.
4 Q Is White Stallion planning on procuring and
5 burning Kentucky coal?
6 A No, not necessarily. The Illinois Basin is
7 technically defined as geologic formations that
8 actually are -- exist in several states; Illinois
9 Kentucky, Indiana all among them.
10 Q So when -- we're still talking about the same
11 kind of coal that's been represented in the
12 application, a bituminous?
13 A Yes.
14 Q Do you understand that portions of the draft
15 permit have different emission limitations depending
16 on whether or not coal or pet coke is being burned?
17 A Yes, I do understand that.
18 Q You understand that. How will White Stallion
19 Energy Center identify, record and report the relative
20 ratios of pet coke to coal being burned at any one
21 time so that the regulators and the public can be sure
22 that the emission limitations are being met for the
23 fuel that's being burned?
24 A Well, I don't know exactly how those reports
25 are to be delivered. I can tell you that we will

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1 comply in every way with reporting requirements, and
2 the data for such will be readily available and will
3 be simple to determine the quantities of any blend,
4 for example.
5 Q And how -- in your experience, how is it
6 simple to determine the quantities of the blend?
7 What do you anticipate the data to be
8 able to show?
9 A How much of what sources are contained in the
10 fuel.
11 Q On, like, an hourly basis of blending or --
12 A You know, I don't -- again, I apologize. I
13 just -- that is not my technical expertise but --
14 Q Do you know if there's someone that is
15 testifying on behalf of White Stallion that might be
16 better to answer that question -- that specific
17 question?
18 A It's possible that the -- I'm not sure,
19 candidly.
20 Q So you're not sure if it should be someone at
21 RPS or Stanley?
22 A I guess, now that you raise it, I suppose
23 that the people who are most able to answer that, who
24 have done the operational thinking about this, are the
25 Stanley crew. That does not mean that RPS does not

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1 have knowledge of it. I'm just telling you what I
2 know.
3 Q I understand. Who or what entity made the
4 decision to propose CFBs rather than PC units?
5 A Development committee.
6 Q Do you know about what time frame that
7 decision was made?
8 A Fairly early on in the formation of the
9 project, fairly shortly after the development
10 agreement was executed; prior, obviously, to the
11 permit application.
12 Q So is this early '08 or late '07?
13 A In that time frame. I can't testify exactly
14 which day or anything like that.
15 Q Okay. And roughly how much money is the
16 plant going to cost to build?
17 A I wish I had a great answer for that. You
18 know, I would say that the best answer that I can give
19 you, based on my current knowledge, is that if the
20 price of this plant is determined to be where such
21 prices were seven or eight years ago, it would be in
22 the range of possibly $2 billion.
23 If the plant cost is, as projected or as
24 similar plants cost at the height of the expansion
25 cycle in the economy, you know, roughly two years ago,

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1 it might have been $3 and a half billion. We don't
2 have a final engineered cost of this project. That
3 really is the next step in this process after we have
4 certainty of what the air permit is going to include.
5 Q You testify in your prefiled testimony about
6 local economic benefits. Do you recall that
7 generally?
8 A Yes.
9 Q Has White Stallion Energy Center, Sky Energy
10 or Spark Energy evaluated any negative economic
11 impacts that this facility might have on the local
12 area?
13 A Can you give me example? I'm not sure what
14 you mean by that.
15 Q Well, has there been any economic analysis on
16 the financial impact, whether it is in health costs or
17 other costs associated with additional air pollution
18 in the local area?
19 A Well, I assume this entire process to be
20 about that question. I have not done, sort of
21 independent of this process, analysis of those things.
22 My understanding is this process is the obligation to
23 determine the impact on public health. So obviously
24 complying with it is -- the cost of complying with any
25 permit that is granted is the cost.

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1 Q Okay. So you haven't looked at whether or
2 not there is any costs which are sort of -- which are
3 deferred onto the local community as a result of the
4 permitted amount of air pollution that White Stallion
5 Energy Center may emit?
6 A Well, I haven't quantified --
7 Q Okay. Has White Stallion Energy Center, Sky
8 Energy or Spark Energy evaluated the economic impact
9 of additional ozone formation in the
10 Houston/Galveston/Brazoria nonattainment area that may
11 result from White Stallion Energy Center's emissions?
12 A I'm not sure I even --
13 Q I can reask it.
14 Has White Stallion Energy Center, Sky
15 Energy or Spark Energy evaluated the economic impact
16 of additional ozone formation in the
17 Houston/Galveston/Brazoria nonattainment area that may
18 result from the White Stallion Energy Center's air
19 emissions?
20 MR. GROTEN: Objection. That assumes
21 that there will be some.
22 JUDGE QUAIRTROUGH: I'll sustain that.
23 I'm not sure that's in the record yet.
24 Q (BY MS. HANN) Has White Stallion Energy
25 Center, Sky Energy or Spark Energy evaluated the

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1 economic impact, if one exists, of additional ozone
2 formation in the Houston/Galveston/Brazoria
3 nonattainment area?
4 A I don't know of the existence of such an
5 impact. Again, I'm not the --
6 Q Sure. But to your knowledge, there has been
7 no evaluation of whether or not there will be an
8 economic impact resulting from additional ozone
9 formation. Is that correct?
10 A Yes, that is correct, as I have not -- I have
11 no knowledge that there is such an impact.
12 Q Are you aware of the relative location of
13 White Stallion Energy Center to the
14 Houston/Galveston/Brazoria nonattainment area?
15 A Yes.
16 Q What is your understanding of the relative
17 location?
18 A It is, you know, near it. I don't know
19 specifically how near it.
20 Q Within 20 miles?
21 A I don't know.
22 Q Do you know how far south of the Brazoria
23 County line Bay City is approximately?
24 A You know, I apologize; I just don't.
25 Q Would it be fair to say that White Stallion

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1 Energy Center has not conducted a single study to
2 determine whether or not any potential negative
3 economic or health -- negative economic impacts of the
4 new or additional emissions of NOx, VOC, particulate
5 or mercury emissions from the stacks would be on the
6 local area or in the Houston/Galveston/Brazoria
7 nonattainment area as it relates to NOx?
8 A As it relates to --
9 Q NOx.
10 A Nitrogen oxides?
11 Q Uh-huh.
12 A You know, the only hesitation on my part is
13 that the entire economic evaluation includes the cost
14 of mitigation, and so that cost is built into
15 everything that we do, but have we isolated what the
16 impacts are, I leave that to people who have
17 responsibility to do that, including this process.
18 Q You just mentioned the entire economic impact
19 includes the costs of mitigation. Did I understand
20 you correctly?
21 A Yeah.
22 Q I don't -- can you explain that statement to
23 me further?
24 A Well, as I understand it -- and I invite you
25 to fully question engineers on this -- that there is

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1 NOx -- there are NOx controls built into this project.
2 Q So your understanding of mitigation are any
3 pollution control equipment required by the BACT
4 process. Is that correct?
5 I'll rephrase. Is it your understanding
6 of mitigation, as you've used it earlier, any required
7 pollution control technologies that result from
8 this -- from the permitting process?
9 A That and the optimization of their use, yes.
10 Q What do you mean by "optimization of their
11 use"?
12 A Well, I assume that in addition to the
13 limitations that we will have placed upon us in this
14 permit that we will have an ongoing obligation to emit
15 the least amount that we possibly can.
16 Q So it's your understanding that regardless of
17 the emission limits that if White Stallion Energy
18 Center is able to emit limits lower than that, that
19 you have that obligation?
20 A Yeah. I speak nothing of the capability to
21 do that.
22 Q But if the capability exists, it's your
23 understanding that White Stallion Energy Center has
24 the obligation to emit lower than the permitted
25 limits?

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1 A I don't know that it has a legal obligation.
2 Q So what kind of obligation were you speaking
3 of?
4 A Personal.
5 Q And one last question about economic -- any
6 particular economic impacts. Let me be clear.
7 Has White Stallion Energy Center, or its
8 partners, subsidiaries, evaluated or researched or
9 seen a study about -- or that compares its total NOx
10 contributions to the ozone nonattainment area and
11 calculated how much it might cost to offset that
12 amount of NOx in the nonattainment area?
13 A I don't have -- I don't have direct knowledge
14 of any such thing.
15 Q How do the barges that might bring pet coke
16 or coal to White Stallion Energy Center get to White
17 Stallion Energy Center?
18 What is their mode of -- what is their
19 route that they would take?
20 A The general contemplated route -- of course,
21 you know, from the point of source, that might be
22 different locations, but they would come on the
23 waterway system, potentially the Mississippi River,
24 and then, you know, of course, if they're coming from
25 the south, they would come along the Intercoastal

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1 Waterway. If they come down the Mississippi, they
2 would come along the Intercoastal Waterway from that
3 direction and then up the Lower Colorado River to the
4 site location.
5 Q Is there an agency or entity that White
6 Stallion Energy Center would need to seek
7 authorization from to bring the barges up the Colorado
8 River?
9 A I believe the Army Corps of Engineers.
10 Q Is that authorization part of the 404 permit
11 that we've been talking about today or is that a
12 separate authorization?
13 A You know, I know of no separate authorization
14 for that.
15 Q Do you have an idea how much water White
16 Stallion Energy Center is going to need to operate?
17 A Yeah, generally.
18 Q Can you give me an idea of how much water
19 it's going to require?
20 MR. GROTEN: Objection, Your Honor. I'm
21 not sure how this bears on the air permit application
22 that's before us.
23 JUDGE QUALTROUGH: Yeah. What is the
24 relevance of that?
25 MS. MANN: The relevance of how much

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1 water it's going to take for White Stallion to operate
2 is related to some of the pollution control
3 technologies and why some may or may not have been
4 chosen, particularly wet scrubbing and dry scrubbing.
5 There's always a discussion that wet
6 scrubbing takes more water, and so dry scrubbing is an
7 alternative when water is in short supply.
8 JUDGE QUALTROUGH: All right. Go ahead
9 and answer the question.
10 A I apologize. Can you reask it?
11 Q (BY MS. MANN) Sure. You said you have an
12 idea of how much water White Stallion Energy Center
13 would require to use to operate, and I asked you what
14 is your idea of that.
15 A Yeah, approximately 22,000 acre-feet per
16 year.
17 Q Is that water readily available?
18 A We believe so, yes.
19 Q Why do you believe so?
20 A Because we've applied to the Lower Colorado
21 River Authority and their indication to us is that
22 there's water availability.
23 Q How did they indicate that?
24 A We've had a couple of meetings with them.
25 They have given us a sense of what the amount of water

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1 that they have is and the amount of water that is
2 currently under contract for use by others, and they
3 have engaged in discussions of such a contract.
4 Q Okay. But no such contract exists at this
5 time. Is that correct?
6 A It does not. It has not been signed, no.
7 MS. MANN: Can we go off the record for,
8 like, two minutes, maybe three?
9 JUDGE QUALTROUGH: How much more do you
10 have?
11 MS. MANN: Probably not much if I go off
12 the record and get it cleared up.
13 JUDGE QUALTROUGH: Okay. We're off the
14 record.
15 (Recess: 12:15 p.m. to 12:18 p.m.)
16 JUDGE QUALTROUGH: All right. We're
17 back on the record.
18 Q (BY MS. MANN) I just wanted to clear up a
19 couple of things, Mr. Rotondi.
20 Can you tell me what White Stallion
21 Energy Center's current -- present-day business plan's
22 projected costs are for this project?
23 A You know, I previously gave you a range.
24 Q Right of 2.5 to 3.5 billion. Is that
25 correct?

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1 A Two to three -- 2.0 to 3.5 billion.
2 Q And you don't -- and you don't have a current
3 estimation, as of today or very recently, if you're in
4 that range?
5 A Yeah. I mean, the real reason that that
6 range is not narrower is that there hasn't been a
7 project in this recessionary time costed to full
8 completion, but I would expect that as soon as we have
9 a sense that there is finality to the air permit; you
10 know, the definition of everything that has to happen
11 in terms of the design of this project, that we'll
12 move into a -- advancing the engineering, and that
13 cost level will be narrowed down fairly quickly after
14 that.
15 Q Okay. So as of today, you can't narrow down
16 the projected costs between 2 to $3.5 billion? You
17 can't give me a more narrow range?
18 A No, I cannot.
19 Q Did Mr. Bird advise you or the development
20 committee that different site plans were being used on
21 different applications?
22 A I was aware -- again, I can't speak directly.
23 As a member of the development
24 committee, did he advise us is your question?
25 Q Or yourself --

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A Or myself.
Q -- individually.
A I was aware that the team, including Mr. Bird, were evaluating alternatives to address the question of mitigation of all impacts. I was not aware that any of them impacted air emissions.
It's not my understanding necessarily that any of them do, and for that reason, you know, we're committed to live by the design of this project submitted in the application for this permit.
Q But did I understand your testimony that if the facility was constructed using the site plan for one of the -- that was submitted on behalf of White Stallion Energy for one of the other permit applications that it's your understanding that air emissions are not going to be changed?
A I can't -- based on everything I know at this moment, I can't verify that. I will say that, you know, if it is necessary to amend -- I mean, there's going to be one design of this plant at the end of the day. And my assessment at this moment is that it is that that has been submitted in this application. So if we have to alter any of the other process to comply with that, then that's what will happen.
Q Why -- if it's your understanding that the

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one submitted on behalf of White Stallion Energy Center in this air application is the site plan, why would Mr. Bird submit a site plan subsequent to that that was different on different applications?
A I only think that he's, and my team are, today continuing to explore every avenue to reduce impacts of this project.
Q Do you have any opinion one way or the other whether or not the 404 -- I'm sorry -- whether or not the Army Corps of Engineers -- strike that.
Why didn't Mr. Bird just submit the site plan from the air permit application to the Army Corps of Engineers?
A The fact is I don't exactly know the answer to that.
Q Same question for the wastewater permit. Why didn't he just submit the site plan --
A Yeah. Same answer.
Q You testified earlier that EPA had submitted comments in response to White Stallion's 404 application. Is that correct?
A It is my -- yes, I'm aware they have submitted comments.
Q And EPA -- in commenting on the 404 application, EPA must have relied on White Stallion

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Energy Center's representations in that application. Correct?
A You know, I can't tell you what they relied on. Certainly, the application was available to them.
Q But nowhere in the application does it -- is there a document or statement that suggests that there is a different site plan on a different application for this same facility. Is that correct?
A Yeah. I don't know of any statement to that effect.
Q Okay.
MS. MANN: I've no further questions, and I pass the witness. Thank you, Mr. Rotondi.
JUDGE QUALTROUGH: All right. Mr. Humphrey, how much do you have for cross?
MR. HUMPHREY: Five minutes.
JUDGE QUALTROUGH: And how much do you have for redirect? They went first. Yeah, they passed.
MR. GROTEN: I have five questions. We can do this in short order, Your Honor.
JUDGE QUALTROUGH: Okay. So let's go ahead and do this witness before lunch -- finish up. Go ahead, Mr. Humphrey.
MR. HUMPHREY: Thank you, Your Honor.

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CROSS-EXAMINATION
BY MR. HUMPHREY:
Q I have a few follow-up questions about the site plans.
Am I correct that you submitted site plans for this application, the water quality application and the 404 application?
A Are you asking me if we did that?
Q Yes.
A I believe so, yes.
Q Are the site plans for the water quality application and the 404 application the same?
A I don't know the answer to that.
Q Which was the one that was submitted latest in time of the three?
A Based on these exhibits in front of me, the -- give me a second to look at them.
(Brief pause)
A It looks to me like the first of the two was the water discharge application.
Q (BY MR. HUMPHREY) So the 404 one was the last one of the three?
A Yes, I would agree.
Q And I think that you said on cross-examination that there were alterations to the

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1 404 application to mitigate impacts on the wetlands.
2 Is that right?
3 A Yeah, that was -- that's the reason that I
4 believe there are differences.
5 Q And that, I believe, you also said on
6 cross-examination represents an improvement --
7 environmental conformance if there's lower impacts on
8 the wetlands. Is that right?
9 A Yes. As long as nothing else is sacrificed
10 to achieve them, I believe that to be true, yes.
11 Q So ultimately, the two or three different
12 site plans you have do have to be reconciled, don't
13 they?
14 A Yes.
15 Q And does it not make sense to you that
16 ultimately the site plan that's going to prevail is
17 the one that was submitted last in time that
18 represents the least impact on the environment?
19 A You know, I don't believe that's
20 automatically the case at all. I think that the --
21 you know, this is the process that is the flagship of
22 the permitting process. This is the -- the design
23 that is submitted for this application is the design
24 that -- when I say we've committed or approved it, we,
25 as the owner/developers of this project are prepared

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1 to fully implement it.
2 To the extent that it can be modified in
3 time to reduce impacts, I believe that it makes good
4 sense for us to consider making such amendments. So
5 we will pursue those to the extent that those are, A,
6 compliant and, B, improvements.
7 Q Well, why would White Stallion ever consider
8 going -- regressing to an older site plan that's more
9 harmful to the environment?
10 A Well, I don't know -- I'm not -- I sort of
11 think that's a mischaracterization. The fact is that
12 there are alternatives, and we believe that at the end
13 of the day, you know, the best is where this needs to
14 go, but I don't consider one of these three a better
15 environmental outcome overall than the others. I
16 believe that we have one approved design and have
17 evaluated alternatives to it.
18 Q But didn't you just say a moment ago that the
19 404 site plan represented an improvement in
20 environmental performance because it will have
21 mitigated impacts on the wetland?
22 A Well, you know, that's potentially
23 theoretically true, but I don't have a database that I
24 can use to change the design of this project based on
25 where we are in that process. That's the fact.

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1 Q Okay. If it turns out, in fact, that the 404
2 plan, which we do agree is the latest one and at least
3 at this point is considered to be the best
4 environmental performing plan, if that's the
5 conclusion you ultimately do reach, do you agree that
6 that's the plan that will prevail of the two or three
7 plans that are out there?
8 A You know, there may be a fourth alternative.
9 The bottom line is that I have data about this project
10 and about this process that has led me to recommend,
11 and my development committee to agree, with a design
12 for this project. There is a permitting process that
13 is ongoing.
14 I do understand that at the end of the
15 day that if there are differences, they have to be
16 reconciled, but if you're asking me for what the
17 answer is to what is the optimum scenario, I don't
18 know. All I know is I have an approved scenario, and
19 it's this one.
20 Q Yes, sir. And that is not what I asked you.
21 What I asked you is this: If you
22 ultimately conclude that a 404 plan, which, at this
23 point, is considered to be the best environmental
24 performer, and that's your testimony, if that
25 conclusion does not change, then don't you agree that

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1 that's ultimately going to be the site plan that will
2 prevail?
3 MR. GROTEN: Objection. That
4 mischaracterizing his testimony.
5 JUDGE QUALTROUGH: I didn't hear that
6 testimony, Mr. Humphrey. I think he was speaking --
7 correct me if I'm wrong, but when he said that, I
8 thought he was talking about the mitigation aspect,
9 not overall so --
10 MR. HUMPHREY: Okay. Well, I guess --
11 JUDGE QUALTROUGH: I'm not sure I heard
12 the testimony the way you're characterizing it.
13 MR. HUMPHREY: Okay. I wrote down that
14 he said -- and I guess the transcript will bear that
15 out.
16 Q (BY MR. HUMPHREY) But even going back --
17 let's just take the most basic piece of it.
18 We do agree that the reason that there
19 were changes with the 404 site plan was -- the purpose
20 of that was to mitigate impacts on the wetlands.
21 Correct?
22 A I believe so, yes.
23 Q So if ultimately that's the plan that has the
24 lowest environmental impact on the wetlands, would you
25 agree that that's the site plan that's going to

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1 ultimately prevail, if that turns out to be the case?
2 A If, and only if, that turns out to be the
3 case.
4 Q That's fair enough. Thank you.
5 MR. HUMPHREY: I'll pass the witness.
6 JUDGE QUALTROUGH: Redirect?
7 MR. GROTEN: Yes, Your Honor.
8 REDIRECT EXAMINATION
9 BY MR. GROTEN:
10 Q Mr. Rotondi, is the site plan -- taking a
11 look at Exhibit 121 --
12 A Yeah.
13 JUDGE QUALTROUGH: That's EDF?
14 MR. GROTEN: I'm sorry. EDF 121, yes,
15 Your Honor.
16 Q (BY MR. GROTEN) To your knowledge, is the
17 site plan that's attached to that an accurate
18 representation of the site plan that White Stallion
19 was asking TCEQ to consider in the context of the
20 TPDES permit?
21 A Yes.
22 Q Then the same question with regard to the
23 site plan associated with the 404 permit referenced in
24 EDF Exhibit 122.
25 Is that an accurate representation of

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1 the site plan that White Stallion was asking the Corps
2 of Engineers to evaluate?
3 A Yeah.
4 Q That's --
5 A Yes.
6 Q Can you -- is it -- to your knowledge, is
7 there any constraints against White Stallion building
8 the plant exactly as it's represented in the air
9 permit application that's before TCEQ and this agency
10 at the moment?
11 A Absolutely not.
12 Q Are there other options that you're aware of
13 to -- or are you aware of whether there are other
14 options for wetlands mitigation, other than those
15 represented in the 404 application that's exhibit --
16 EDF Exhibit 122?
17 A Yes. I would characterize that that is an
18 ongoing process to determine the best way, and there
19 are other alternatives.
20 Q And then you've -- have you seen Exhibit 123?
21 It's the site layouts that were
22 proffered by Mr. Weber earlier this morning.
23 A I have seen it, yeah, and I have a copy of it
24 in front of me.
25 Q Is it possible for you, from that, to

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1 identify any variations in the site plan represented
2 in those two drawings?
3 Can you characterize what those changes
4 are?
5 A I can do so generally.
6 Q And if it would be more helpful to --
7 apparently he's done us the courtesy of putting it up
8 as a display.
9 If you find that to be an easier way of
10 conveying the information to the ALJs, feel free to do
11 that as well.
12 A I will do so.
13 Q You may have to speak up really loud,
14 Mr. Rotondi, in order for the court reporter to hear
15 you.
16 A Yeah. Please let's me know if you can't
17 hear.
18 Again, I'm not our engineer, so this is
19 a general answer.
20 Q That's all I'm asking for, is your general
21 understanding.
22 A This half of the plant is the actual -- you
23 know, the power block in our vernacular. It is
24 identical. This is, you know, the boilers, the air
25 turbines, the chimneys. This half of the project is

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1 the material handling aspect. This block in green is
2 the stormwater discharge containment area.
3 And as I understand it, as in the air
4 application version that we have submitted, this has
5 potentially impacted forested wetland. So these are
6 long-term storage for fuels.
7 What apparently has been done in the
8 second of the two versions is that the long-term
9 storage has been moved sort of from the south to the
10 north of the live fuel storage for the purpose of
11 moving this to the north and minimize those impacts on
12 the forested wetlands.
13 Q Those are the options that you're presenting
14 to the Corps of Engineers as possibilities for
15 mitigation. Is that correct?
16 A Yeah. Those are two, I believe. I haven't
17 attended all the meetings, but I'm sure I understand
18 that there are others as well.
19 But the bottom line is that, you know,
20 that is the one -- those are the options that I know
21 of that have been documented and discussed.
22 The other thing that I understand to be
23 a difference is on the location of the barge facility,
24 but my understanding is that that was an alternative
25 that wasn't necessarily intended to be changed. That

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1 was more for navigational questions, but that we are
2 fully prepared to not change that.
3 The only other thing that I understand
4 is that the sum total of these changes essentially
5 moves points of air emission, associated with the
6 material handling, away from the property lines, more
7 to the interior of the site, and, thus, it has always
8 been represented to me that it is a reduction of air
9 impacts, not an increase.
10 Q And if it is not a reduction, then --
11 A We're under no obligation.
12 Q Would you describe -- then is it fair to say,
13 then, that the changes involved are moving storage
14 piles and the associated changes in location of the
15 conveyors needed to move materials to and from those
16 storage piles?
17 A Yes.
18 Q And to your knowledge, that's the only
19 difference in air emission sources associated with the
20 two representations of the project?
21 A Yes, to my knowledge.
22 JUDGE QUALTROUGH: Mr. Groten, when I
23 said we would finish before lunch, I completely forgot
24 about your recross. So can we just take a break now
25 and come back?

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1 MR. GROTEN: I'm concluded. So
2 unless --
3 JUDGE QUALTROUGH: Okay. I don't want
4 to cut you off. I'm sorry if I interrupted your train
5 of thought.
6 MR. GROTEN: No.
7 JUDGE QUALTROUGH: But we're not
8 going to -- I have a feeling you-all have got a lot
9 more questions to ask.
10 MR. WEBER: Definitely have some now.
11 JUDGE QUALTROUGH: Yeah. Okay. So
12 we're going to break for lunch. If this is a bad
13 time -- I mean, I did; I interrupted you, and I
14 apologize.
15 MR. GROTEN: No. No problem, Judge.
16 I'll -- that's no problem.
17 JUDGE QUALTROUGH: Are you sure?
18 MR. GROTEN: Yes.
19 JUDGE QUALTROUGH: I really didn't mean
20 to interrupt.
21 MS. MANN: Is White Stallion concluding
22 with their redirect?
23 MR. GROTEN: As long as we're taking a
24 break, I'll have a minute or two to think about it.
25 JUDGE QUALTROUGH: Yeah. I mean, I

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1 interrupted him, and I didn't mean to do that.
2 So we're going to break for lunch. So
3 we'll -- let's make this easier. We'll be back here
4 at 1:45.
5 (Recess: 12:38 p.m. to 1:47 p.m.)
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1 AFTERNOON SESSION
2 WEDNESDAY, FEBRUARY 10, 2010
3 (1:47 p.m.)
4 JUDGE QUALTROUGH: All right. We are
5 back on the record. It is 1:47.
6 As I recall, Mr. Groten, you were going
7 to finish up, or had you finished?
8 MR. GROTEN: I'm about to.
9 JUDGE QUALTROUGH: Okay.
10 MR. GROTEN: Thank you for your
11 testimony today, Mr. Rotondi.
12 Pass the witness.
13 JUDGE QUALTROUGH: All right. ED?
14 MR. HARRISON: We pass the witness.
15 JUDGE QUALTROUGH: EDF?
16 MR. WEBER: Thank you, Your Honor.
17 PRESENTATION ON BEHALF OF THE APPLICANT
18 (CONTINUED)
19 FRANK ROTONDI,
20 having been previously sworn, continued to testify as
21 follows:
22 RECROSS-EXAMINATION
23 BY MR. WEBER:
24 Q On redirect, Mr. Rotondi, you testified that
25 the site plans that you submitted to the water quality

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1 division and the Army Corps of Engineers were
2 accurate. Is that correct?
3 A Yes.
4 Q You'll agree with me that the one submitted
5 to the water quality division and the Army Corps of
6 Engineers is different than the site plan. That's a
7 part of the Air Permitting Act page. Is that correct?
8 A Yes.
9 Q Well, you also agree with me, I take it, that
10 two different site plans can't both be accurate.
11 Right?
12 A You know, I think I have been very clear as
13 to what one is and what the other is.
14 MR. WEBER: Your Honor, I just ask that
15 he answer my question.
16 JUDGE QUALTROUGH: Well, why don't you
17 ask it again because I think he's explained it.
18 Now about you answering his question one
19 more time regarding the two site -- let me let you
20 re-ask. I don't want to put a question in your mouth.
21 Q (BY MR. WEBER) My question is, If you have
22 two different site plans with different emission
23 points, different locations at various facilities,
24 they can't both be accurate, can they?
25 A One is the approved design of the project.

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1 The other is a -- one of the alternatives under
2 contemplation for advancing the environmental
3 performance of the project, but only one of the two
4 that is approved.
5 Q So when you say, "approved," you mean
6 approved by your development committee?
7 A Correct.
8 Q That you and Mr. Randy Bird are both members
9 of. Correct?
10 A Correct.
11 Q And so is it your testimony that you
12 submitted an unapproved application and site plan to
13 the Army Corps of Engineers in the water quality
14 division?
15 A No, that's not my testimony. My testimony is
16 that -- well, actually the fact is that was not
17 separately approved by the development committee.
18 There's only one approved design. The development
19 committee -- or we have meetings. We have
20 conversations. They were aware that we were pursuing
21 additional permits and they certainly understood that
22 mitigating the impacts is on a continuing basis as
23 part of the process.
24 Q But you've testified again today that you're
25 now abandoning the application and site plan submitted

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1 to the Army Corps of Engineers, and instead going with
2 this application and site plan. Correct?
3 A I absolutely did not testify that I have
4 abandoned anything. What I've testified is that I
5 have one approved site plan, and that we're in the
6 process of working on ultimate mitigation of the
7 impacts of this project, hopefully, for years to come.
8 Q Which site plan is it that you're asking
9 these Judges to evaluate and consider the impacts
10 from?
11 A The ones submitted in the air application for
12 this permit.
13 Q Which is different than the one that is
14 submitted to the Army Corps of Engineers, for which
15 they have issued a notice, and that you're asking them
16 to approve. Correct?
17 MR. GROTEN: Your Honor, may I object to
18 A, this is beyond the scope of what I was asking him;
19 and B, it's about the twelfth time we've gone over
20 this.
21 MR. WEBER: Your Honor --
22 JUDGE QUALTROUGH: Yeah. How is this
23 different from the testimony we've heard before?
24 MR. WEBER: Well, Your Honor, on
25 redirect Mr. Groten asked if the applications and the

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1 site plans submitted to Corps and the water quality
2 division were accurate. And what I'm trying to get to
3 is, how can you have different site plans, both be
4 accurate?
5 MR. GROTEN: Which was the question he
6 asked prior to this one, and you indulged him to allow
7 him to answer yet again. So . . .
8 MR. WEBER: I don't believe he has
9 answered the question. So I'll object as
10 nonresponsive to that question.
11 JUDGE QUALTROUGH: Okay. Ask the
12 question one more time.
13 Q (BY MR. WEBER) You'll agree with me, will you
14 not, that two different site plans cannot both be
15 accurate. Correct?
16 A You know, I don't know how to answer the
17 question because both of them are drawings, they are
18 completed drawings. One has been submitted in this
19 process. That is the core and base plan for this
20 project. The other is part of a process to continue
21 the permitting process of this project and may lead to
22 potential petitions for alteration of this, but may --
23 of the base design that we have provided here, and may
24 not. So in their context, I believe that both are
25 accurate, but those are their only purposes.

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Q With all due respect, Mr. Rotondi, it sounds like playing games here.

How is it possible, how do you justify certifying different site plans to two different agencies and testify that they are both accurate when they are facially different?

MR. GROTEN: Objection, asked and answered; repetitive of earlier questioning beyond what I asked him in cross.

JUDGE QUALTROUGH: I'll sustain that objection.

Q (BY MR. WEBER) Would you turn to EDF Exhibit 120, please.

A Yes.

Q Would you turn to the very last page of that, please.

A Yes, I'm there.

Q And that is entitled, "Figure 3-3 Material Handling Plot Plan." Is that correct?

A Yes.

Q And that's White Stallion Exhibit 103, Page 18 of 515. Correct?

A Yes.

Q The labels that are listed in red, do you see those?

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A Yes.

Q Those are each designated emissions point. Correct?

A I guess that's the case. I mean, I'm not directly familiar with this, but I assume it is.

Q If the site plans submitted to the Army Corps of Engineers is the site plan that ultimately gets constructed, would you agree with me that the emissions associated with the barges, or the barge unloading facility as shown on Figure 3-3 would change, the emissions points would move. Is that correct?

A Yes. I would point out that the movement of the barge facility had nothing to do with any issue of wetlands mitigation. And so it is perfectly valid in the location as submitted in the air application.

MR. WEBER: I'll object as nonresponsive. I'll move to strike that testimony.

JUDGE QUALTROUGH: I'm sorry. I was looking, and -- so I didn't follow. But I thought I understood his answer. Do you want to ask the question again, or have it read back? Do you really want a ruling?

MR. WEBER: Could you read back the question?

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(Requested portion read)

MR. WEBER: I would move to strike -- or I object to everything after the answer "Yes."

JUDGE QUALTROUGH: Overruled.

Q (BY MR. WEBER) I've handed you a highlighter, and on Figure 3-3, would you highlight for me the emissions points associated with the barge loading and unloading? For instance, CONV1, does that stand for Conveyor 1, do you know?

A I don't know.

Q You don't know?

A I didn't develop this.

Q Assume with me that is an emissions point.

A Okay.

Q If the site plan submitted -- and all these questions I'm about to ask you assume that if a site plan was submitted to the Army Corps of Engineers, is the one that is ultimately constructed, if that's the case, would the emissions point of Conveyor 1 move?

A I believe, yes.

Q Okay. Could you highlight that for me?

What about Barge 1, Barge 2, would they move?

A I would presume -- I believe, yes.

Q TRSFR1, Transfer 1, would that move?

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A I believe, yes.

Q CONV2, would that move?

A I believe so.

Q Please highlight it as well.

CONV3, Conveyor 3, would that move?

A I don't know actually.

MR. WEBER: Your Honor, may I approach the witness?

JUDGE QUALTROUGH: Yes, you may.

Q (BY MR. WEBER) Earlier on redirect you were referring to my blowup of EDF Exhibit 123, and you testified, I believe, that the long-term storage piles under the version of the site plan submitted to the Corps were flipped up and moved to the north. Correct?

A Yes, that's correct.

MR. GROTEN: May I interrupt, while he's having a pause here, to note that any further questioning on this may be misleading, given it appears that the overlay is misaligned with the underlying graph.

MR. WEBER: I can try to mess with that, or we can look at Exhibit 123 if you like, and I can just point to this for purposes of ease. That might be an easier way of doing it.

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1 JUDGE QUALTROUGH: Okay. So we're on
2 123?
3 MR. WEBER: Yes, Your Honor.
4 Q (BY MR. WEBER) And if you look at 123, if you
5 look at the piece of paper under 123, you'll see a
6 location. Again, this is part of the Corps permit
7 application, 44 Permit Application. You'll see a
8 location for a railcar dumper building. Do you see
9 that?
10 A Yes.
11 Q It's kind of just above the -- what I believe
12 is the road that leads from the facility down to the
13 barge facility located along the river.
14 A Uh-huh.
15 Q The location of the barge unloading facility
16 that's further northwest than what's been proposed
17 today. Is that correct?
18 A Yes.
19 Q Do you see that railcar dumper building?
20 A Yes.
21 Q And in that depiction -- which is marked as
22 EDF Bates label 019944. Correct?
23 A Yes.
24 Q Do you see a conveyor coming off of that
25 heading from west to east? Correct?

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1 A This is in --
2 Q Correct.
3 A Yes.
4 Q Now, I will lay the plastic version over the
5 top of it, which is the version of the site plan
6 submitted as part of the air quality application. And
7 it's true, is it not, that the railcar dumper building
8 on the overlay, on the plastic version, is farther
9 south. Correct?
10 A That is correct, yes.
11 Q Okay. As is the conveyor leading off of
12 there. Correct?
13 A Yes.
14 Q Okay. And referring back to Figure 3.3, that
15 conveyor that comes off the railcar dumper building is
16 marked as Conveyor 3. Correct?
17 A Yes.
18 Q Okay. So would that emissions point move?
19 A Yes.
20 Q What about the emissions labeled as
21 EC-RAIL-UL, and beneath that it says, RAILFUG, rail
22 fugitive. Would that move?
23 A Yes.
24 JUDGE QUALTROUGH: I don't know where
25 that is.

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1 MR. WEBER: Back on 3.3 -- 3-3. Pardon
2 me, Your Honor.
3 JUDGE QUALTROUGH: Okay. Hold on one
4 moment.
5 Q (BY MR. WEBER) Could you highlight that one
6 as well?
7 A I did, yes.
8 Q Thank you.
9 JUDGE QUALTROUGH: I'm sorry. What was
10 that number again?
11 MR. WEBER: Yes, ma'am. That was
12 EC-RAIL-UL, RAILFUG.
13 JUDGE QUALTROUGH: Okay.
14 Q (BY MR. WEBER) To the right of that, is Truck
15 1, Truck 2.
16 A Yes.
17 Q Those emissions points would also move.
18 Correct?
19 A It appears, yes.
20 Q Okay. Could you highlight that?
21 Likewise with TRSFR2 and FR3. Correct?
22 A Yes.
23 Q Highlight that please.
24 Same with CONV4 and CONV5. Correct?
25 A Yes.

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1 Q Highlight that please.
2 Same with the two long-term storage
3 piles both labeled as SP1. Correct?
4 A Yes.
5 Q The same with TRSFR4, 5 and 6. Correct?
6 A Yes.
7 Q Please highlight those.
8 Same with CONV6. Correct?
9 A Yes.
10 Q The same with the two limestones -- what I
11 believe are limestone storage piles, but the two
12 storage piles labeled as SP2. Correct?
13 A Yes.
14 Q And it would appear to be at least a slight
15 change in the location. It would appear to be moving
16 slightly to the south under the Corps permit
17 application for the two storage piles listed, shown on
18 Figure 3-3, which I believe are the active storage
19 piles in there, SP1. Correct?
20 A Yes.
21 Q Thank you. Would you highlight those as
22 well?
23 A Yes.
24 Q And I don't remember if we did transfer
25 TRSFR7. Would that move?

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A Yes.
Q Please highlight it.
And CONV7?
A Yes.
Q Thank you.
MR. WEBER: Pass the witness, Your Honor.
JUDGE QUALTROUGH: Sierra Club?
MS. MANN: No questions. Pass the witness.
JUDGE QUALTROUGH: OPIC?
MR. HUMPHREY: I have no questions, Your Honor.
JUDGE QUALTROUGH: All right. Thank you very much.
MR. WEBER: Your Honor, may I approach the board?
JUDGE QUALTROUGH: Oh sure.
MR. WEBER: Thank you.
MR. LEE: Your Honor, we have one bit of housekeeping from earlier this morning, which involved IGCC sentences in our application.
JUDGE QUALTROUGH: Right.
MR. LEE: We have replacement pages that show what we think the strike throughs should be.

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I'll try to distribute those, and if we all agree, then we'll change them out in the record copy.
JUDGE QUALTROUGH: Okay. Have you distributed these?
MR. LEE: I have not. I'm about to right now.
JUDGE QUALTROUGH: Okay. Do you want a chance to look at those?
MS. MANSURI: Yes, I would like a few minutes.
JUDGE QUALTROUGH: All right. Look it over. We'll talk about it at the end or tomorrow morning, if you need more time.
MS. MANSURI: There may be one point of contention. So perhaps if we could bring it -- resolve it first thing tomorrow morning.
JUDGE QUALTROUGH: That's fine.
MS. MANSURI: And also for housekeeping, to give a ruling on the record from Your Honors, regarding both the Request for Commission and IGCC --
JUDGE QUALTROUGH: Okay. Your Request for Clarification on your Commission; we're denying your request. The record stands as it is now.
And what was the second one? So the IGCC that was objected to, and it was sustained, and

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that was excluded from the record.
MS. MANSURI: Okay. And for the record, I would object to the ALJ's refusal to state a basis for the denial, the request to take a commission.
JUDGE QUALTROUGH: Okay.
MS. MANSURI: Thank you.
JUDGE QUALTROUGH: And we'll leave for tomorrow morning the -- the revisions to the copies after you get a chance to look at them.
MS. MANSURI: Thank you.
JUDGE QUALTROUGH: All right. Anything else?
MR. GROTEN: We have another witness.
JUDGE QUALTROUGH: Another witness.
MR. GROTEN: All right. Mr. DiSorbo.
JUDGE QUALTROUGH: Mr. DiSorbo, can I get you to raise your right hand please.
(Witness sworn)
JUDGE QUALTROUGH: If you could please state your name for the record.
WITNESS DISORBO: My name is Shanon DiSorbo.
JUDGE QUALTROUGH: All right. Go ahead, Mr. Groten.

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SHANON DISORBO,
having been first duly sworn, testified as follows:
DIRECT EXAMINATION
BY MR. GROTEN:
Q Mr. DiSorbo, I'm wondering if, in that stack of phone books in front of you, you can find the one -- that is -- it contains White Stallion Exhibit Nos. 100 through 121. It may be Volume 1.
A I've got it.
Q Do you recognize what's been marked as White Stallion Exhibits 100 to 121? Can you generally characterize what they are?
A Yes. It looks like my prefiled testimony and exhibits.
Q And can you specifically identify Exhibit -- White Stallion Exhibit 100?
A Exhibit 100 is my direct testimony in the case.
Q As submitted by White Stallion in roughly August of 2009?
A Correct.
Q Have you reviewed your testimony since it was originally submitted?
A I have.
Q As a result of that review, have you

AFFIDAVIT OF ROBERTO GASPARINI, Ph.D.

STATE OF TEXAS §
§
COUNTY OF HARRIS §

Before me, the undersigned notary public, upon this day personally appeared Roberto Gasparini, Ph.D., a person whose identity has been verified by me, who, upon the administration of an oath, stated and deposed as follows:

1. "My name is Dr. Roberto Gasparini. I am over the age of 21, of a sound mind, and competent in all respects to make this affidavit. I have personal knowledge of all of the facts stated herein, and all of such facts are true and correct.

2. I attended Texas A&M University and obtained three degrees from that institution: a Bachelor of Science in Meteorology in 1999, a Masters of Science in Atmospheric Sciences in 2002, and a Ph.D. in Atmospheric Sciences in 2005. I am currently a Partner and Senior Air Quality Consultant with Source Environmental Sciences, Inc. in Houston, Texas. I have been employed with Source Environmental since 2005. In my work at Source Environmental, I specialize in issues of atmospheric modeling and air quality permitting, and have assisted clients in seeking and obtaining air quality permits from the Texas Commission on Environmental Quality ("TCEQ"). I have previously testified as an expert witness in SOAH proceedings regarding applications for solid-fuel fired power plants.

3. I have been retained by Environmental Defense Fund, Inc. ("EDF") in order to review and analyze certain air dispersion modeling data, site plans, and other materials filed by White Stallion Energy Center, L.L.C. ("White Stallion") with the Texas Commission on Environmental Quality ("TCEQ") in support of White Stallion's application for air quality permits for a 1,320-MW power plant to be located in Matagorda County, Texas. I was also asked to review additional information regarding the same plant filed by White Stallion in support of an application with the United States Army Corps of Engineers ("Corps").

4. I have reviewed the air dispersion modeling files submitted by White Stallion as part of its air permit applications ("WSEC's Air Dispersion Modeling") including White Stallion Exhibits 103 and 109. WSEC's Air Dispersion Modeling was performed using "AERMOD," the air dispersion modeling program accepted by TCEQ for purposes of predicting air quality impacts resulting from a proposed emissions source. Data input into AERMOD includes the locations, types of emissions sources, and the emission rates of the various air pollutants that will be released from the proposed power plant as well as meteorological data. Using this input data, AERMOD uses sophisticated mathematical formulas to predict the ground-level concentration of the various air pollutants at receptor grid points located beyond the plant property. The output data generated by the model is then analyzed to determine whether a proposed source of air pollutants complies with applicable air quality requirements, which in this case include requirements under the federal Clean Air Act and TCEQ's rules. Moving the locations of

Exhibit D

emissions sources changes the input data used in AERMOD. When changes occur to the locations of emissions sources used as modeling input data, the modeling output data is also likely to change.

5. The results of WSEC's Air Dispersion Modeling were used to analyze whether the proposed plant complied with applicable federal and state emission standards for various pollutants, including the federal short-term PSD ("Prevention of Significant Deterioration") increment standard for particulate matter of less than 10 microns in diameter ("PM_{10}"). The short-term PSD increment standard is 30 micrograms per cubic meter ("$\mu g/m^3$"). WSEC's Air Dispersion Modeling submitted to TCEQ in December 2008 and supplemented in February 2009 predicted that impacts from emissions from the proposed plant will be within 2 $\mu g/m^3$ of exceeding the 24-hour PM_{10} PSD increment standard.

6. WSEC's Air Dispersion Modeling used a specific site plan (the "Air Permit Site Plan") to identify the locations of the various facilities and equipment that will be sources of air pollutant emissions. The site plan is depicted on WSEC Exhibit 103 Figures 3-2 and 3-3, and WSEC Exhibit 109 Figure 3-4. See Attachment 1.

7. I have compared the Air Permit Site Plan and WSEC's Air Dispersion Modeling to a site plan dated October 25, 2010 that was submitted to the Corps in November 2010 (the "October 2010 Site Plan"). See Attachment 2. The October 2010 Site Plan is materially different from the Air Permit Site Plan. When the two site plans are compared, it is clear that numerous emissions sources are at different locations. Based upon my review, 73 out of a total of 84 emissions points used in WSEC's Air Dispersion Modeling are depicted at different locations in the October 2010 Site Plan. Approximately 64 of these emissions points are moved one hundred (100) meters or more and two (2) emissions points are moved more than seven hundred fifty (750) meters. I have highlighted the emissions points shown on the Air Permit Site Plan that are at different locations when compared to the October 2010 Site Plan. See Attachment 1. Not all of the emissions points that moved were listed by White Stallion on the Air Permit Site Plan map; therefore, I have also prepared a summary table listing the moved emissions points. See Attachment 3.

8. All of the emissions sources that are at different locations under the October 2010 Site Plan are sources of PM_{10}.

9. Due to the change in location of so many emissions sources, WSEC's Air Dispersion Modeling submitted to TCEQ in December 2008 and supplemented in February 2009 cannot show whether the proposed source as depicted in the October 2010 Site Plan would comply with applicable air quality requirements, including the 24-hour PM_{10} PSD increment standard. In order to determine whether the plant as depicted in the October 2010 Site Plan complies with applicable air quality standards, it is necessary to verify the location of the emissions sources and perform new air dispersion modeling.

10. In my opinion, the numerous changes to the locations of the emissions sources depicted in the October 2010 Site Plan constitute material changes and warrant re-modeling the

potential emissions impacts associated with the proposed plant.

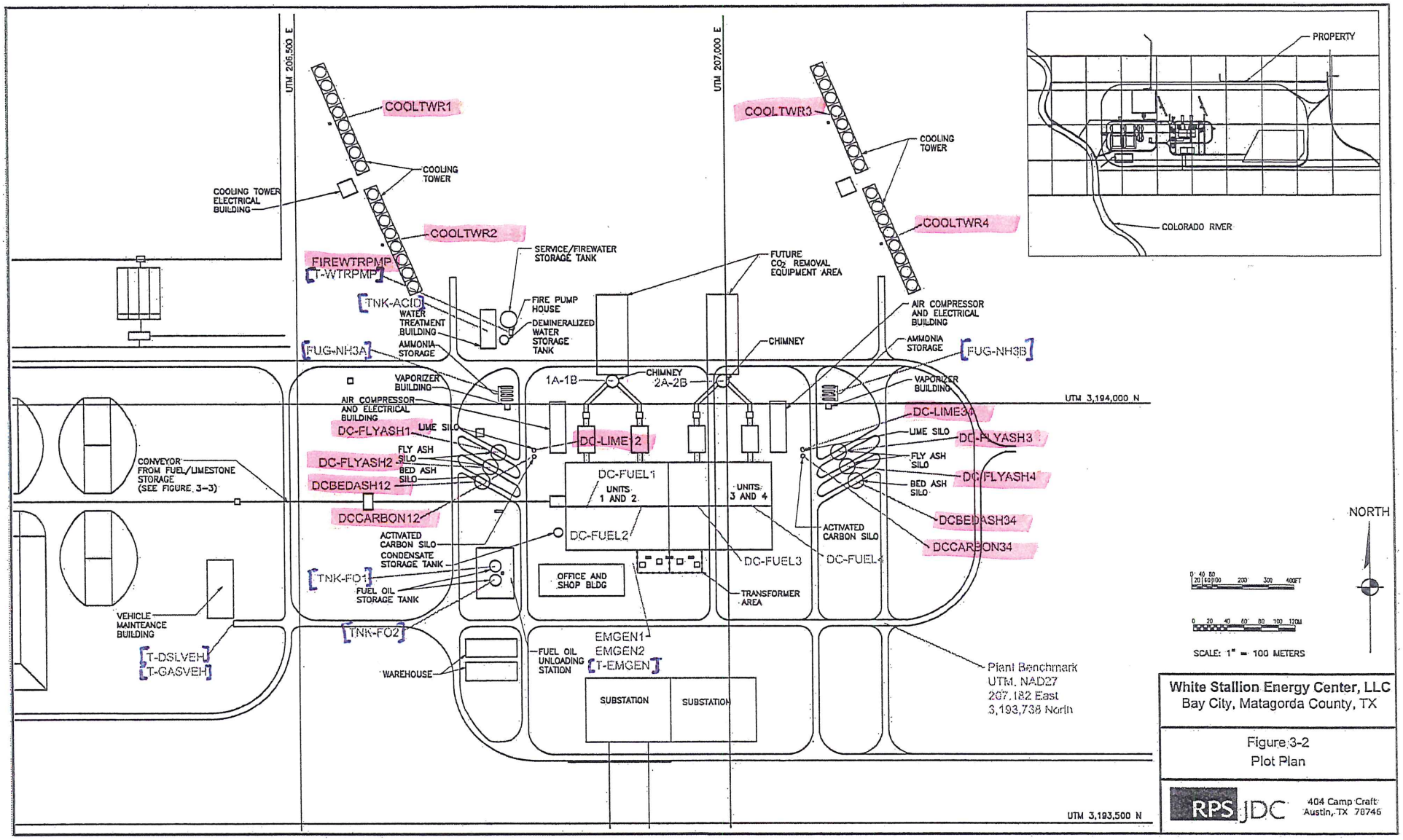
Further affiant sayeth not."

Roberto Gasparini, Ph.D.

SUBSCRIBED AND SWORN to before me, the undersigned notary, on this the 3RD day of March, 2011, to which witness my hand and official seal.

RAJNIKANT V. MEHTA
NOTARY PUBLIC
STATE OF TEXAS
EXPIRES
09-07-2011

Notary Public, State of TEXAS.



→ EPN MOVED

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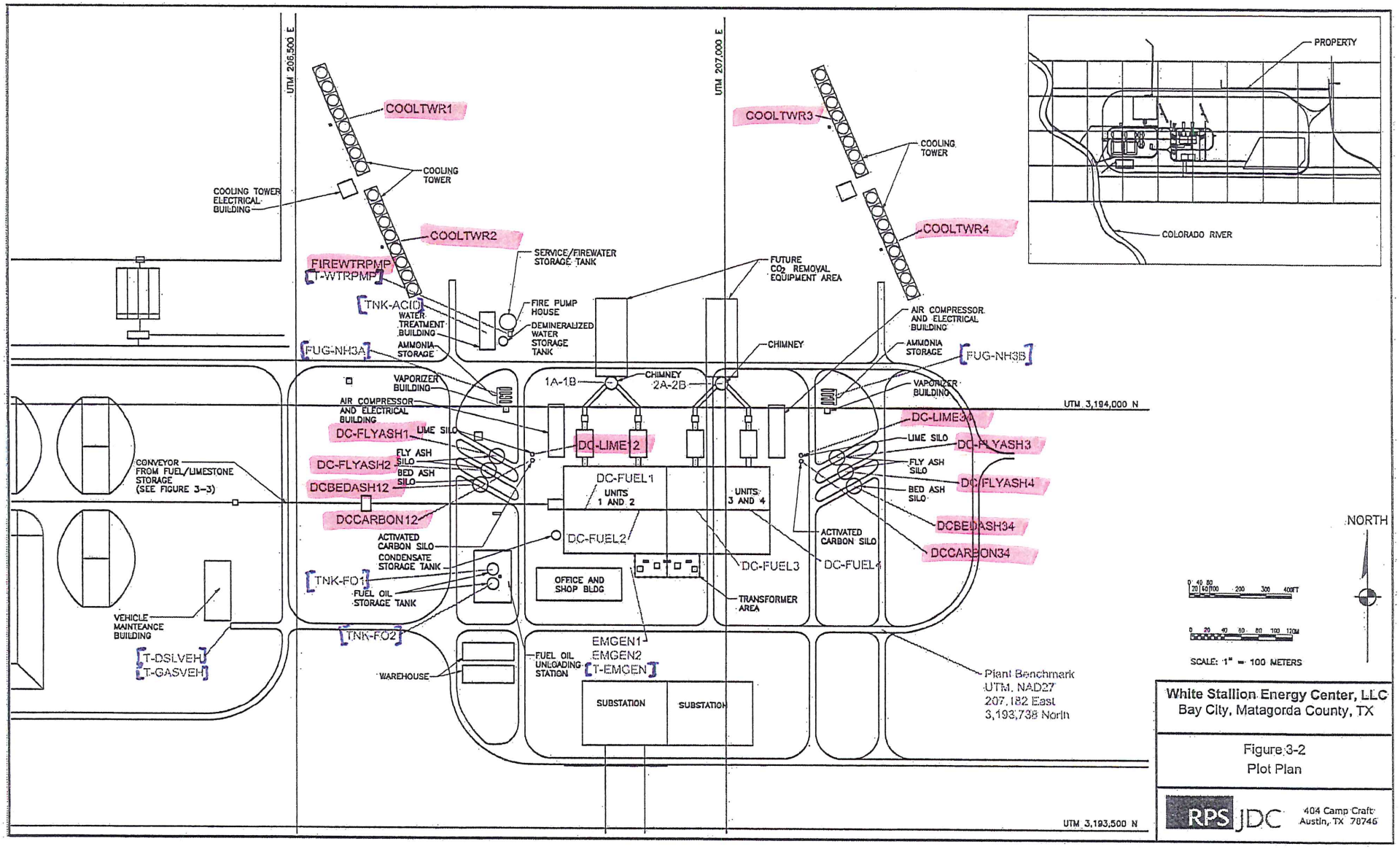

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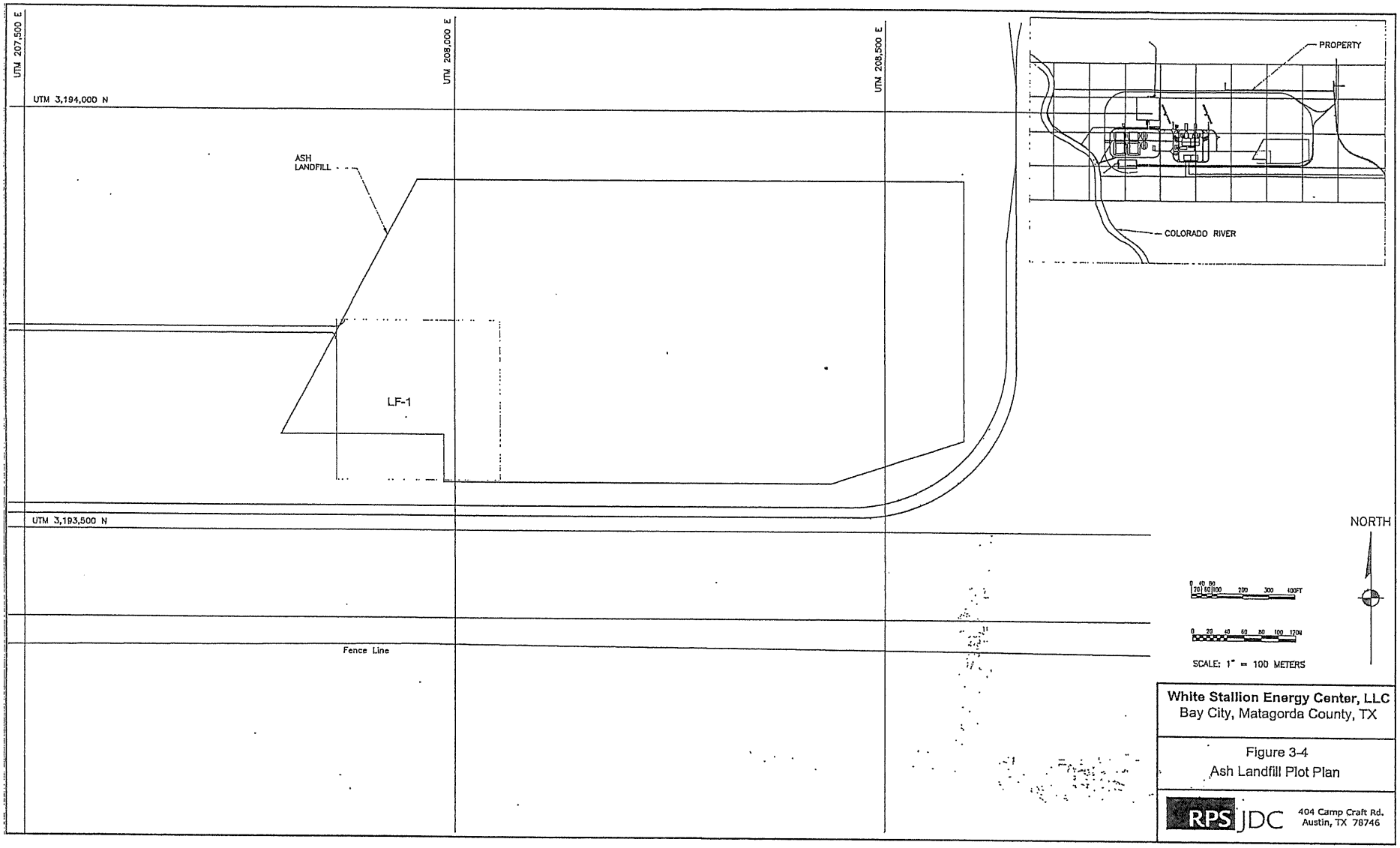
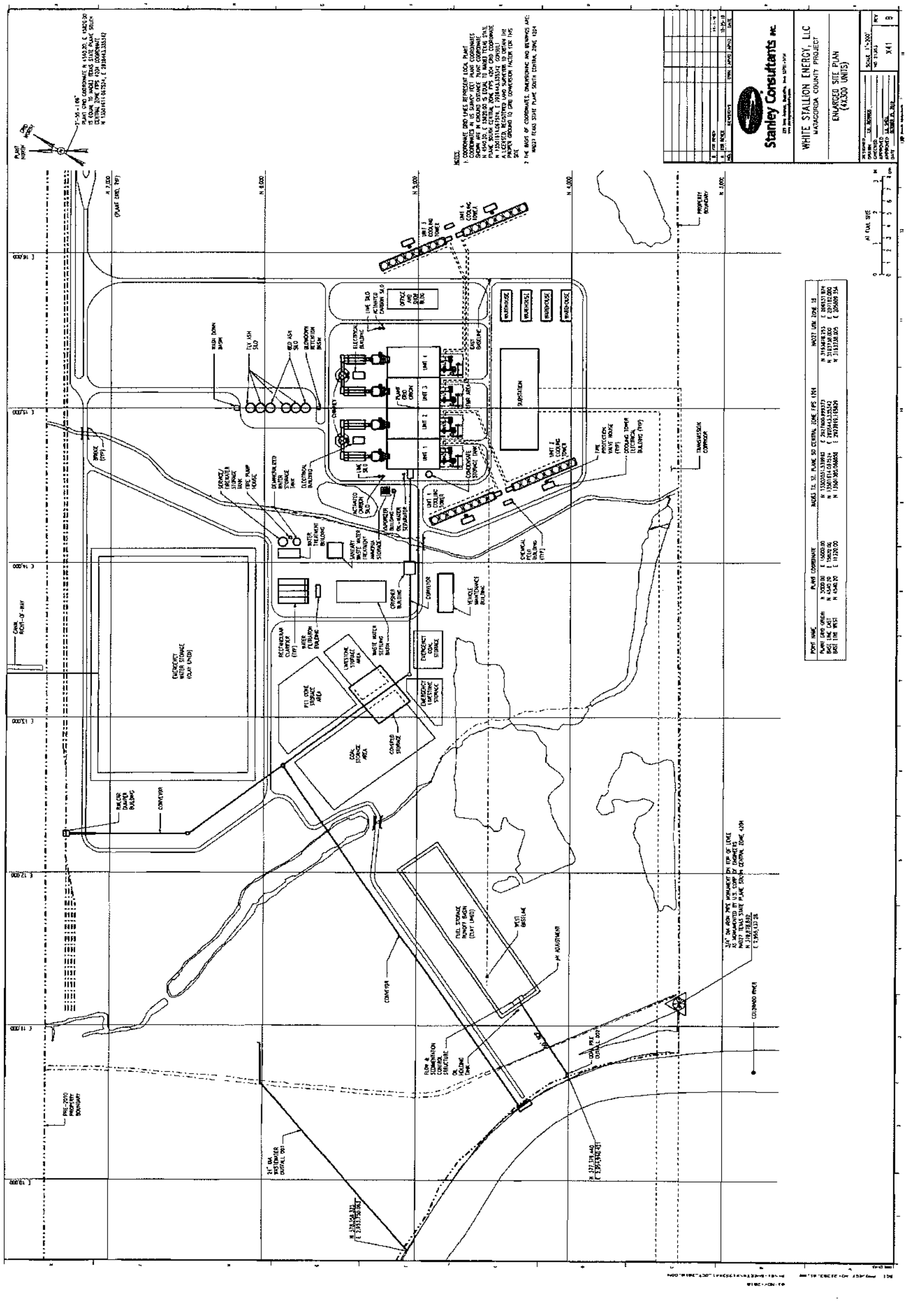

UTM 207,500 E
UTM 208,000 E
UTM 208,500 E
UTM 3,194,000 N
UTM 3,193,500 N
ASH LANDFILL
LF-1
Fence Line
PROPERTY
COLORADO RIVER
NORTH
SCALE: 1" = 100 METERS
White Stallion Energy Center, LLC
Bay City, Matagorda County, TX
Figure 3-4
Ash Landfill Plot Plan
RPS JDC
404 Camp Craft Rd.
Austin, TX 78746


Stanley Consultants INC.
WHITE STALLION ENERGY, LLC
MATAGORDA COUNTY PROJECT
ENLARGED SITE PLAN
(4X300 UNITS)

Entry Number	EPN Name (AERMOD Source ID)	EPN Name (Modeling Report Table 5-1)	UTM mE - AERMOD Input	UTM mN - AERMOD Input	UTM mE - Using 404 Plot Plan	UTM mN - Using 404 Plot Plan	Distance Moved (meters)	Direction Moved (degrees*)	EPNs Moved (running total)
1	1A1B	Units 1 and 2 CFB Boiler	206,868.0	3,194,028.0	206,868.0	3,194,028.0	0		0
2	2A2B	Units 3 and 4 CFB Boiler	206,996.0	3,194,028.0	206,996.0	3,194,028.0	0		
3	DCFUEL1	Unit 1 Fuel/Limestone Dust Collector	206,837.0	3,193,884.0	206,837.0	3,193,884.0	0		
4	DCFUEL2	Unit 2 Fuel/Limestone Dust Collector	206,899.0	3,193,884.0	206,899.0	3,193,884.0	0		
5	DCFUEL3	Unit 3 Fuel/Limestone Dust Collector	206,965.0	3,193,884.0	206,965.0	3,193,884.0	0		
6	DCFUEL4	Unit 4 Fuel/Limestone Dust Collector	207,027.0	3,193,884.0	207,027.0	3,193,884.0	0		
7	FLYASH1	Unit 1 Fly Ash Dust Collector	206,734.0	3,193,942.0	206,930.0	3,194,210.0	332	54	1
8	FLYASH2	Unit 2 Fly Ash Dust Collector	206,724.0	3,193,925.0	206,930.0	3,194,190.0	336	52	2
9	FLYASH3	Unit 3 Fly Ash Dust Collector	207,130.0	3,193,942.0	206,930.0	3,194,138.0	280	136	3
10	FLYASH4	Unit 4 Fly Ash Dust Collector	207,140.0	3,193,925.0	206,930.0	3,194,118.0	285	137	4
11	BEDASH12	Unit 1 & 2 Bed Ash Dust Collector	206,714.0	3,193,907.0	206,930.0	3,194,170.0	340	51	5
12	BEDASH34	Unit 3 & 4 Bed Ash Dust Collector	207,150.0	3,193,907.0	206,930.0	3,194,098.0	291	139	6
13	LIME12	Unit 1 & 2 Lime Silo Dust Collector	206,776.0	3,193,944.0	206,795.0	3,193,952.0	21	23	7
14	LIME34	Unit 3 & 4 Lime Silo Dust Collector	207,088.0	3,193,944.0	207,090.0	3,193,950.0	6	72	8
15	CARBON12	Unit 1 & 2 Carbon Silo Dust Collector	206,776.0	3,193,937.0	206,795.0	3,193,944.0	20	20	9
16	CARBON34	Unit 3 & 4 Carbon Silo Dust Collector	207,088.0	3,193,937.0	207,090.0	3,193,943.0	6	72	10
17	EMGEN1	Diesel-Fired Emergency Generator 1	206,892.0	3,193,808.0	?	?			
18	EMGEN2	Diesel-Fired Emergency Generator 2	206,892.0	3,193,808.0	?	?			
19	FWPMP	Main Diesel-Fired Fire Water Pump	206,746.0	3,194,087.0	206,672.0	3,194,130.0	86	150	11
20	DCRAILUL	Railcar Unloading Building	205,719.0	3,193,884.0	206,080.0	3,194,585.0	788	63	12
21	DC_CRUSH	Crusher Building	206,580.0	3,193,884.0	206,613.0	3,193,892.0	34	14	13
22	FA1LOAD	Fly Ash #1 Truck Loading Fugitives	206,734.0	3,193,942.0	206,930.0	3,194,210.0	332	54	14
23	FA2LOAD	Fly Ash #2 Truck Loading Fugitives	206,724.0	3,193,925.0	206,930.0	3,194,190.0	336	52	15
24	FA3LOAD	Fly Ash #3 Truck Loading Fugitives	207,130.0	3,193,942.0	206,930.0	3,194,138.0	280	136	16
25	FA4LOAD	Fly Ash #4 Truck Loading Fugitives	207,140.0	3,193,925.0	206,930.0	3,194,118.0	285	137	17
26	BA12LOAD	Bed Ash #1 Truck Loading Fugitives	206,714.0	3,193,907.0	206,930.0	3,194,170.0	340	51	18
27	BA34LOAD	Bed Ash #2 Truck Loading Fugitives	207,150.0	3,193,907.0	206,930.0	3,194,098.0	291	139	19
28	BARGE1a	Barge Unloading to Hopper	205,610.0	3,193,591.0	205,540.0	3,193,663.0	100	134	20
29	BARGE1b	Barge Unloading to Hopper	205,610.0	3,193,591.0	205,540.0	3,193,663.0	100	134	21
30	BARGE2a	Barge Hopper to CO-1	205,629.0	3,193,542.0	205,540.0	3,193,663.0	150	126	22
31	BARGE2b	Barge Hopper to CO-1	205,629.0	3,193,542.0	205,540.0	3,193,663.0	150	126	23
32	CONV1	Conveyor #1	205,621.0	3,193,565.0	205,540.0	3,193,663.0	127	130	24
33	TRSFR1	CO-1 to CO-2	205,638.0	3,193,520.0	205,540.0	3,193,663.0	173	124	25
34	CONV2	Conveyor #2	205,729.0	3,193,699.0	205,877.0	3,193,913.0	260	55	26
35	RAILFUG	Rail Unloading Fugitives	205,719.0	3,193,884.0	206,080.0	3,194,585.0	788	63	27
36	TRUCK1	Truck Unloading to Hopper	205,788.0	3,193,890.0	?	?			
37	TRUCK2	Truck Hopper to CO-3	205,788.0	3,193,890.0	?	?			
38	CONV3	Conveyor #3	205,773.0	3,193,884.0	206,082.0	3,194,342.0	552	56	28
39	TRSFR2	CO-3 to CO-4 or CO-5	205,821.0	3,193,884.0	206,216.0	3,194,147.0	475	34	29
40	TRSFR3	CO-2 to CO-4 or CO-5	205,821.0	3,193,884.0	206,216.0	3,194,147.0	475	34	30
41	CONV4	Conveyor #4	205,926.0	3,193,884.0	206,285.0	3,194,055.0	398	25	31
42	CONV5	Conveyor #5	205,926.0	3,193,884.0	206,285.0	3,194,055.0	398	25	32
43	TRSFR4	CO-4 to Mobile Stacker	206,200.0	3,193,884.0	206,335.0	3,193,988.0	170	38	33
44	TRSFR5	CO-5 to Mobile Stacker	206,200.0	3,193,884.0	206,335.0	3,193,988.0	170	38	34
45	TRSFR6	Mobile Reclaim to CO-6 or CO-7	206,200.0	3,193,884.0	206,335.0	3,193,988.0	170	38	35
46	CONV6	Conveyors #6 and #7	206,344.0	3,193,884.0	206,365.0	3,193,946.0	65	71	36
47	TRSFR7	CO-6 or CO-7 to CO-8 or CO-9	206,428.0	3,193,884.0	206,401.0	3,193,892.0	28	163	37
48	CONV7	Conveyors #8 and #9	206,690.0	3,193,884.0	206,509.0	3,193,894.0	181	177	38
49	CONV8	Conveyors #10 and #11	206,690.0	3,193,884.0	206,715.0	3,193,891.0	26	16	39
50	CT1A	Cooling Tower #1	206,529.9	3,194,395.8	206,708.0	3,193,842.0	582	288	40
51	CT1B	Cooling Tower #1	206,536.6	3,194,379.8	206,715.0	3,193,826.0	582	288	41
52	CT1C	Cooling Tower #1	206,543.1	3,194,364.0	206,722.0	3,193,810.0	582	288	42
53	CT1D	Cooling Tower #1	206,549.7	3,194,348.2	206,729.0	3,193,794.0	582	288	43
54	CT1E	Cooling Tower #1	206,556.2	3,194,332.4	206,736.0	3,193,778.0	583	288	44
55	CT1F	Cooling Tower #1	206,562.8	3,194,316.6	206,743.0	3,193,762.0	583	288	45
56	CT1G	Cooling Tower #1	206,569.3	3,194,300.7	206,750.0	3,193,746.0	583	288	46
57	CT1H	Cooling Tower #1	206,575.9	3,194,284.9	206,757.0	3,193,730.0	584	288	47
58	CT2A	Cooling Tower #2	206,589.9	3,194,251.2	206,776.0	3,193,676.0	605	288	48
59	CT2B	Cooling Tower #2	206,596.5	3,194,235.2	206,783.0	3,193,660.0	605	288	49
60	CT2C	Cooling Tower #2	206,603.0	3,194,219.3	206,790.0	3,193,644.0	605	288	50
61	CT2D	Cooling Tower #2	206,609.6	3,194,203.5	206,797.0	3,193,628.0	605	288	51
62	CT2E	Cooling Tower #2	206,616.2	3,194,187.7	206,804.0	3,193,612.0	606	288	52
63	CT2F	Cooling Tower #2	206,622.7	3,194,171.9	206,811.0	3,193,596.0	606	288	53
64	CT2G	Cooling Tower #2	206,629.3	3,194,156.1	206,818.0	3,193,580.0	606	288	54
65	CT2H	Cooling Tower #2	206,635.8	3,194,140.3	206,825.0	3,193,564.0	607	288	55

* - Direction in math degrees (0=E, 90=N, 180=W, 270=S)

Entry Number	EPN Name (AERMOD Source ID)	EPN Name (Modeling Report Table 5-1)	UTM mE - AERMOD Input	UTM mN - AERMOD Input	UTM mE - Using 404 Plot Plan	UTM mN - Using 404 Plot Plan	Distance Moved (meters)	Direction Moved (degrees*)	EPNs Moved (running total)
66	CT3A	Cooling Tower #3	207,111.5	3,194,395.8	207,215.0	3,193,940.0	467	283	56
67	CT3B	Cooling Tower #3	207,118.2	3,194,379.8	207,222.0	3,193,924.0	467	283	57
68	CT3C	Cooling Tower #3	207,124.7	3,194,364.0	207,229.0	3,193,908.0	468	283	58
69	CT3D	Cooling Tower #3	207,131.3	3,194,348.2	207,236.0	3,193,892.0	468	283	59
70	CT3E	Cooling Tower #3	207,137.8	3,194,332.4	207,243.0	3,193,876.0	468	283	60
71	CT3F	Cooling Tower #3	207,144.4	3,194,316.6	207,250.0	3,193,860.0	469	283	61
72	CT3G	Cooling Tower #3	207,150.9	3,194,300.7	207,257.0	3,193,844.0	469	283	62
73	CT3H	Cooling Tower #3	207,157.5	3,194,284.9	207,264.0	3,193,828.0	469	283	63
74	CT4A	Cooling Tower #4	207,171.5	3,194,251.2	207,284.0	3,193,774.0	490	283	64
75	CT4B	Cooling Tower #4	207,178.1	3,194,235.2	207,291.0	3,193,758.0	490	283	65
76	CT4C	Cooling Tower #4	207,184.7	3,194,219.3	207,298.0	3,193,742.0	491	283	66
77	CT4D	Cooling Tower #4	207,191.2	3,194,203.5	207,305.0	3,193,726.0	491	283	67
78	CT4E	Cooling Tower #4	207,197.8	3,194,187.7	207,312.0	3,193,710.0	491	283	68
79	CT4F	Cooling Tower #4	207,204.3	3,194,171.9	207,319.0	3,193,694.0	491	283	69
80	CT4G	Cooling Tower #4	207,210.9	3,194,156.1	207,326.0	3,193,678.0	492	284	70
81	CT4H	Cooling Tower #4	207,217.4	3,194,140.3	207,333.0	3,193,662.0	492	284	71
82	SP1	Petcoke/Coal Storage Pile	205,838.7	3,193,661.5	206,273.0	3,193,843.0	471	23	72
83	SP2	Limestone Storage Pile	206,224.1	3,193,756.5	206,413.0	3,193,959.0	277	47	73
84	LF1	Ash Disposal Landfill	207,862.0	3,193,559.0	?	?			

* - Direction in math degrees (0=E, 90=N, 180=W, 270=S)

Attachment 4

CAUSE NO. D-1-GN-11-000011

ENVIRONMENTAL DEFENSE FUND, INC.,	§	IN THE DISTRICT COURT OF
	§	
VS.	§	TRAVIS COUNTY, TEXAS
	§	
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,	§	201st JUDICIAL DISTRICT

ENVIRONMENTAL DEFENSE FUND'S
REPLY IN SUPPORT OF APA MOTION TO REMAND
FOR EVIDENCE ON WHITE STALLION'S NEW SITE PLAN

TO THE HONORABLE LORA LIVINGSTON:

On March 4, 2011, Environmental Defense Fund, Inc. ("EDF") moved this Court to remand this case to the Texas Commission on Environmental Quality ("TCEQ") to take additional evidence under the Administrative Procedure Act ("APA"), TEX. GOV'T CODE § 2001.175(c). EDF here replies to responses filed May 16, 2011 by TCEQ and by intervenor White Stallion Energy Center, LLC ("WSEC").

A. Summary.

In their responses, neither TCEQ nor WSEC disputes the essential facts supporting EDF's Motion for Remand, which are: (1) **less than a week** after the Final Order was signed by the TCEQ in the underlying air permit proceeding, and **very likely well before** the Final Order was signed, WSEC made wholesale changes to the site plans for its proposed power plant; (2) these changes relocate 73 out of 84 pieces of equipment, coal/petroleum coke piles, and other sources of pollutant emissions; (3) WSEC failed to inform TCEQ or the other parties that it had made these changes; and (4) WSEC then represented to the U.S. Army Corps of Engineers, under sworn certification, that it

intended to build the plant according to the changed site plan. The changed site plan is material additional evidence that "could have" (and should have) an effect on the agency's decision; thus meeting the standard under APA § 2001.175(c) and relevant case law—a standard that WSEC and TCEQ both misstate and mischaracterize as a "high hurdle."

This Court has broad discretion to remand this case to the TCEQ and it should do so to allow the parties the opportunity to conduct discovery and present evidence on the plant WSEC actually intends to build.

B. The APA remand materiality standard is "could affect."

APA § 2001.175(c) grants this Court broad discretion to order a remand for the agency to take additional evidence if the Court is "satisfied" the evidence is "material" and there was "good reason" for failure to present it before the record closed at the agency. TEX. GOV'T CODE § 2001.175(c). A decision whether to remand a case for additional evidence under section 2001.175(c) is reviewed for an abuse of discretion. *City of Port Arthur v. Sw. Bell Tel. Co.*, 13 S.W.3d 841, 844 (Tex. App. – Austin 2000, no pet.).

WSEC argues that the test for materiality under APA § 2001.175(c) sets a "high hurdle." WSEC Resp. at 6. Similarly, TCEQ argues (at p. 5 in its Response) that, to be material under § 2001.175(c), the new evidence "likely would change the agency's decision." WSEC and TCEQ misrepresent the law. Under § 2001.175(c), evidence is material "if it ***could affect*** the agency's decision." *Smith Motor Sales, Inc. v. Texas Motor Vehicle Commission*, 809 S.W.2d 268, 270 (Tex. App.—Austin 1991, writ denied)

(emphasis added); *Texas Oil & Gas Corp. v. Railroad Comm'n*, 575 S.W.2d 348, 351-52 (Tex. App.—Austin 1978, no writ) (additional evidence "meets the test of materiality" if the agency "*could have* reached a conclusion contrary to its previous conclusion" had it considered the evidence) (emphasis added); *Independence Sav. & Loan Ass'n v. Gonzales Co. Sav. & Loan*, 568 S.W.2d 463, 464-66 (Tex. App.—Austin 1978, writ ref'd n. r. e.) (in case involving application for new state savings and loan charter, upholding the district court's remand for evidence of the effect of federal authorization of new S&L branch after the close of the administrative record). In these cases and others[1], the Third Court has repeatedly affirmed that, to be "material," evidence need only have the *potential* to affect findings made by the agency.

Ignoring this clear precedent, WSEC argues that the APA § 2001.175(c) materiality standard is "of real importance or having great consequences." WSEC Resp. at 5. None of the cases WSEC cites support this claim. *Feuerberg v. Bush*, 175 S.W.3d 442, 447 (Tex. App.—Dallas 2005, no pet.) is not an APA case at all and utterly fails to address the materiality standard under § 2001.175(c). *City of San Antonio v. Tex. Dep't of Health*, 738 S.W.2d 52 (Tex. App. – Austin 1987, writ denied) is likewise inapplicable,

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[1] *See, e.g., Gulf States Util. v. Coalition of Cities*, 883 S.W.2d 739, 748 (Tex. App. – Austin 1994), *rev'd on other grounds*, 947 S.W.2d 847 (Tex. 1997)(noting that, in *Independence Savings*, the approval of the federal S&L branch after the state agency decision "directly affected the body of evidence underlying a fact finding upon which the approval of the state application turned ...."); *Pub. Util. Com'n v. Houston Lighting & Power Co.*, 715 S.W.2d 98, 105 (Tex. App.—Austin 1986), *aff'd in part and rev'd in part on other grounds*, 748 S.W.2d 439 (Tex. 1987) (upholding a remand under § 2001.175(c) for utility to put on evidence of the costs it had incurred in connection with a nuclear power plant before the date the PUC determined, after the hearing, was the date a prudent utility would have cancelled the plant, noting that "[t]he additional evidence is material in that it may establish an allowable expense. . . if [the PUC] had considered evidence . . . [it] *could have* reached a conclusion contrary to its present position")(emphasis added).

addressing an *agency's* discretion to re-open the record – not a *reviewing court's* discretion under APA § 2001.175(c).

Buttes Resources Co. v. Railroad Comm'n, 732 S.W.2d 675 (Tex. App. – Houston [14th Dist.] 1987), does not help WSEC either. There, the appeals court held that the trial court did not abuse its discretion in refusing to remand for three pieces of petroleum engineering evidence; two of which Buttes could have provided in the agency hearing, and the third of which trial testimony indicated was immaterial. *Id.* at 681. WSEC also gets no help from *Bexar-Metro. Water Dist. v. TCEQ*, 185 S.W.3d 546 (Tex. App. – Austin 2006, pet. denied.), in which the appellate court merely held that the trial court did not abuse its discretion in denying a motion to remand for new evidence on an application for certificate of convenience and necessity (CCN). But in that case, the CCN application had not changed, and the record had exhaustively addressed the issues raised by the CCN application. *Bexar-Metro,* 185 S.W.3d at 550-55.

Precedent established by the Third Court of Appeals is settled and clear: the standard for materiality under APA §2001.175 (c) is "***could affect***," or "***may affect***," not "would affect" or "likely to affect." WSEC's and TCEQ's attempts to invent a different, more onerous standard fail as a matter of law.

C. The wholesale changes to WSEC's site plan are material.

1. WSEC Committed to the September 2008 Site Plan in the Hearing Before SOAH.

The new site plan is material to the Final Order because it makes wholesale changes to the facility that WSEC intends to build. TCEQ's Final Order was based on

evidence and testimony concerning the specific site plan WSEC filed with its TCEQ air permit application in September 2008. In fact, WSEC took great pains to represent that it actually intended to build this particular plan. On the very first day of the hearing before SOAH, EDF moved to dismiss the application on the basis that, after September 2008, WSEC had filed conflicting site plans, both under sworn certification, with the TCEQ's Water Quality Division and with the United States Army Corps of Engineers ("Corps"). But in response, WSEC's CEO Frank Rotondi swore:

> **[W]e have submitted a site plan in the air application for this project to which we are fully and completely prepared to build . . . in every respect.**

Tr. at 77. The SOAH ALJs ultimately denied EDF's motion and in their Proposal for Decision, expressly relying on this sworn testimony, they explained:

> "Mr. Rotondi testified that WSEC intended to build the facility as stated in this application. ... [i]f WSEC intended to build the proposed facility as shown in the site plan in this application, then Protestants' concerns did not rise to the level of a legal basis for continuing the hearing."

PFD at 13-14. Therefore, WSEC consciously elected to proceed to hearing and obtain the Final Order on its September 2008 site plan – not on any subsequent ones.

2. <u>WSEC Cannot Belatedly Substitute the Factual Foundation on Which the Final Order Was Built</u>.

In spite of WSEC's sworn representations to SOAH, it is undisputed that within six days after the Final Order, WSEC had already prepared a new site plan, which it filed with the Corps shortly thereafter. The evidence presented before the TCEQ, which is specific to the September 2008 site plan, fails to demonstrate that the WSEC is entitled to

the requested permits if built in accordance with WSEC's new site plan, which differs in dozens of respects.

Rather, as explained in the affidavit of Dr. Roberto Gasparini, Ph. D. (attached as Exhibit D to EDF's Motion for Remand) in order to demonstrate that the changed site plan complies with the prerequisites to receive a permit, WSEC must present air dispersion modeling evidence showing that emissions from the proposed plant meet federal and state air quality standards. EDF Motion for Remand at Ex, D, ¶ 4. The locations of emissions sources and the rates of emissions from those sources are data inputs that must be entered into the modeling. *Id.* Therefore, if the site plan changes materially, the air emissions modeling data used to demonstrate compliance with applicable federal and state air quality standards may also materially change. *Id.* at ¶¶ 4, 10.

Neither TCEQ nor WSEC has controverted any *facts* relied on by Dr. Gasparini, nor any opinions expressed by Dr. Gasparini. Neither TCEQ nor WSEC filed any affidavit. Instead, WSEC's attorneys now *argue* that the proposed power plant's main stacks do not move closer to the property lines in the new site plan, suggesting that this means the changes in other emissions points could not affect whether the plant meets air quality standards. These arguments are not only technically incorrect but also fail to establish that the dramatically altered site plan will not affect the TCEQ's decision below.

To the exact contrary, as Dr. Gasparini explains in a supplemental affidavit attached to this reply as Exhibit A, the numerous changes to material handling facilities in fact may affect whether the proposed plant can comply with specified maximum

concentration of particulate matter in the near vicinity of the plant.[2] Furthermore, material handling facilities have a shorter emission release height than stacks, and as a result may have proportionately greater effects on levels of particulate matter in the air closer to the proposed plant (whereas the much taller stacks tend to have greater impacts farther away from the plant). Ex. A at ¶4. Comparing WSEC's current site plan with the one that was the subject of the contested case proceeding and upon which the Final Order was based, many material-handling facilities have moved, with the third largest source being moved from the middle of the property to a location very close to the property line. *Id.* at ¶5. Under federal and state law, WSEC must demonstrate that levels of particulate matter at and beyond the property line are below applicable maximum, ground-level pollutant concentrations. In addition, particulate matter emissions rates may increase as a result of the new site plan. Just as the relocation of 73 out of 84 emissions points could result in different modeling results, increases in emissions rates also impact air dispersion modeling. *Id.*

Dr. Gasparini's unchallenged affidavits demonstrate that the change in site plans directly alters the modeling of potential emissions, and could affect findings based on modeling evidence. As a matter of law, this evidence is material. *HL& P,* 715 S.W.2d at 105; *Gulf States Util. v. Coalition of Cities*, 883 S.W.2d at 748 (contrasting *Independence Savings*, where a new federal branch "directly affected the body of evidence underlying a

[2] Although WSEC insinuates that the emissions from the material handling facilities result in "relatively small amounts" of dust, the volumes of particulate material handled are massive. For instance, WSEC's permit authorizes the receipt and handling of up 5,000,000 tons per year of coal, 5,000,000 tons of petroleum coke, 2,000,000 tons of limestone, along with 1,500,000 tons of fly ash and 800,000 tons of bed ash, which are waste materials left over after burning the fuel. Emissions from these activities may total dozens of tons of particulate matter per year. See WSEC permit at MAERT Table pp. 3-7.

fact finding upon which the approval of the state application turned," with the subsequent Supreme Court decision GSU relied on, which "could not have affected the Commission's findings").

D. The evidence is new and EDF had good reason for not presenting it earlier.

WSEC and TCEQ additionally argue that EDF has already presented "the very evidence" it now wants the Commission to consider. WSEC Resp. at 2; TCEQ Resp. at 4. Similarly, WSEC insinuates that the issue has previously been presented "seven times." WSEC Resp. at 3-4. These arguments are frivolous and misrepresent the record before the TCEQ. WSEC's new site plan is dated October 25, 2010, six days *after* the TCEQ issued the air permit decision, and was not provided to EDF until six days before motions for rehearing were denied by operation of law. Accordingly, this evidence was not presented before SOAH, was not subject to discovery, was not reviewed or modeled by EDF's experts, and was not in the record at the time TCEQ issued its Final Order. At best, the new site plan was presented to TCEQ *once*, and then only in a motion to reopen filed two days before motions for rehearing were overruled by operation of law.[3]

WSEC and TCEQ also contend that the "good reason" requirement is not met because EDF raised the discovery of the new site plan in its motion to reopen the record filed on December 6, 2010, two days before motions for rehearing were overruled by

[3] EDF did not receive the new site plan until December 2, 2010, when it received several hundred pages of documents in response to its FOIA request filed with the U.S. Army Corps of Engineers. By the time it was able to file its motion to re-open on December 6, 2010, a mere two days remained before the date on which motions for rehearing were overruled by operation of law. In fact, the TCEQ's letter noting that motions for rehearing were overruled by operation of law makes no reference to EDF's motion to reopen or otherwise indicates that it was even considered by TCEQ. See Exhibit B, December 17, 2010 letter from TCEQ.

operation of law. This claim is flatly contrary to Third Court of Appeals precedent. Even where a movant asks the agency to reopen in its motion for rehearing and the agency refuses, a motion to remand for additional evidence can be granted, and should be granted if the evidence **could affect** an issue in the case. *PUC v. Houston Lighting & Power Co.,* 715 S.W.2d at 104-05 (holding that the district court properly granted HL&P's motion to remand to the PUC for presentation of additional evidence, even though HL&P's request to present evidence was previously presented in a motion for rehearing which the PUC denied).

WSEC and TCEQ also claim that the matter has already been addressed because EDF raised the issue of WSEC's other conflicting site plans during the SOAH hearing. WSEC Resp. at 3-4; TCEQ Resp. at 4-5. These arguments are likewise frivolous because, as noted above, WSEC testified that it was "fully and completely prepared to build" the air permit site plan and therefore the earlier conflicting site plans were not relevant. PFD at 13-14. The issue before the Court is not whether WSEC intends to build the earlier plans it disavowed in sworn testimony before SOAH; it is whether WSEC now intends to build the new plan (as it now represents to the Corps) which was filed with the Corps immediately after the Final Order was issued.

Finally, WSEC contends that EDF cannot argue that air modeling evidence using WSEC's current site plan is material because EDF successfully objected, during the hearing, to WSEC's unsuccessful attempt to present rebuttal evidence that the difference between emissions from the September 2008 site plan it went to hearing on at TCEQ and another, earlier plan it had filed with the Corps were negligible. EDF objected that such

evidence was irrelevant because Mr. Rotondi had already testified that the September 2008 site plan filed with TCEQ was the project that WSEC was "fully and completely prepared to build." Sustaining the objection, the ALJs ruled that, based on Mr. Rotondi's testimony, only modeling of the September 2008 site plan was relevant and that WSEC's testimony concerning a different site plan that it did not intend to build was irrelevant. *See* Tr. 1327-1329, attached as Exhibit C to this reply.

E. Did WSEC "bait and switch" a permit amendment?

Finally, the proposed additional evidence is material, and discovery at TCEQ is needed, on an independent and important issue – whether WSEC has played a "bait and switch" game with opposing parties, the SOAH ALJs, and the public's statutory right to participate in a meaningful contested case on the air quality impacts resulting from the plant WSEC intends to build. Texas Health & Safety Code § 382.0291(d) provides that an applicant "may not amend the application after the 31st day before the date on which a public hearing on the application is scheduled to begin." If an amendment "would be necessary," the applicant must "resubmit the application" to TCEQ and restart the public notice clock. The changed site plan, dated six days after TCEQ signed the Final Order and which must have taken weeks if not months of engineering time to prepare, raises substantial questions whether WSEC intentionally sought to circumvent these statutory requirements.

WSEC admits (and so does TCEQ) that it is now entirely possible that WSEC will build the plant using the changed site plan submitted to the Corps shortly after the TCEQ signed the Final Order. *See* WSEC Resp. at 5 (admitting site plan is "evolving"). Thus,

Mr. Rotondi's statement that WSEC intends to build using the TCEQ site plan is, at best, in the immortal words of Richard Nixon, "no longer operative." Certainly WSEC made the change after the 31st day before the date on which the public hearing began. What we don't know is what Sen. Howard Baker famously asked: "what did the President know and when did he know it?" Here, we don't know when WSEC decided to change its plans and prepare the October 2010 site plan.

A site plan for a proposed power plant takes a long time to prepare, and WSEC's representatives testified under oath that WSEC has a "development committee" (of which Mr. Rotondi is a member) to review and decide on site plans. EDF Motion for Remand, Ex. C, pp. 88-90. WSEC may have deliberately waited until after the close of the record at TCEQ, after the SOAH ALJs' proposal for decision, or after the TCEQ's Final Order, to finalize the switch. We simply do not know. This Court should remand so that EDF can conduct discovery and present evidence on when WSEC decided to switch from the September 2008 site plan to the October 25, 2010 site plan. *See In re Texas State Board of Public Accountancy*, 303 S.W.3d 892 (Tex. App.—Austin 2010, orig. proceeding) (discovery in connection with motion to remand under APA § 2001.175(e) must be conducted at the agency, not in the trial court).

In stark contrast, WSEC requests that the Court proceed with judicial review of whether the TCEQ properly held that emissions from the old, outdated site plan comply with applicable air quality standards, and allow WSEC to seek a permit alteration (which does not require notice and hearing) to use the new site plan. 30 TAC 116.116(c). Under such a scenario, the parties would proceed through the current administrative appeal to

determine whether the TCEQ correctly issued a permit for a now-superseded site plan that WSEC does not intend to build, while WSEC then attempts to obtain a permit for the plan that it has certified to the Corps that it *does* intend to build without public notice and outside of the scrutiny of any contested case process.

The procedure advocated by TCEQ/WSEC is not only ridiculously inefficient but allows WSEC to make a mockery of the contested case process at TCEQ. Such an approach would allow WSEC to obtain a permit based upon a "dummy" site plan that the evidence suggests WSEC intended to jettison well in advance of the Final Order. As reflected in a May 13, 2011 letter from the Environmental Protection Agency to TCEQ concerning WSEC's multiple site plans (copy attached as Exhibit D), under WSEC's and TCEQ's approach, "we're left with a 'bait-and-switch' scenario where a source can propose one site plan during the original permit application process, navigate through Texas' public participation process for permits, obtain a permit, and then immediately change the site plan with no EPA and public review in order to obtain other permits that may be necessary for construction of the facility. This raises significant issues about meaningful public participation in the permit decision-making process." *See* Exhibit D.

APA Section 2001.175(c) is tailor-made for situations like this. EDF respectfully requests that this Court grant its motion to remand, and for all such other and further relief to which EDF may be entitled.

Respectfully submitted,

By: _____

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CERTIFICATE OF SERVICE

I certify that on May 23, 2011, the foregoing document was served by certified mail, return receipt requested, and hand delivery on all counsel of record:

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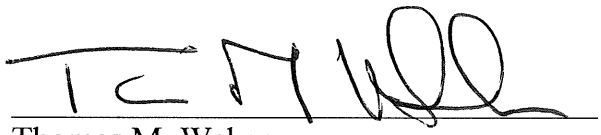

Thomas M. Weber

SUPPLEMENTAL AFFIDAVIT OF ROBERTO GASPARINI, Ph.D.

STATE OF TEXAS §

COUNTY OF TRAVIS §

Before me, the undersigned notary public, upon this day personally appeared Roberto Gasparini, Ph.D., a person whose identity has been verified by me, who, upon the administration of an oath, stated and deposed as follows:

1. "My name is Dr. Roberto Gasparini. I am over the age of 21, of a sound mind, and competent in all respects to make this affidavit. I have personal knowledge of all of the facts stated herein, and all of such facts are true and correct. This affidavit supplements my prior affidavits dated March 3, 2011 and May 2, 2011. I have reviewed the responses filed by White Stallion Energy Center, L.L.C. ("White Stallion") and the Texas Commission on Environmental Quality ("TCEQ") to Environmental Defense Fund, Inc.'s ("EDF") Motion for Remand.

2. Each of the emissions sources identified in White Stallion's air permit application is important for air dispersion modeling purposes. This is because the emission sources and their locations are inputs to the air dispersion model. The moving of emissions sources changes the input data used in the air dispersion model. The air dispersion model uses the emission source locations, among other inputs, to predict off-property emission impacts resulting from operation of the proposed power plant. The predicted off-property emission impacts are then compared against the applicable state and federal standards to determine compliance with Clean Air Act requirements and implementing regulations. When changes occur to the input data (i.e. moving emission sources) then the output data (i.e. the predicted off-property emission impacts) are also likely to change. Based on my comparison of the October 2010 site plan and the Air Permit Site Plan, 73 out of a total of 84 emission points used in the air dispersion model for the air permit application were moved. In my opinion, without modeling the emissions from the sources as they would be located on White Stallion's new site plan, it is not possible to determine whether the net effect would be a violation of one or more of the federal or state clean air act standards.

3. White Stallion's response emphasizes the importance of the location of the main stacks (which are similar to very tall chimneys) and ignores the other numerous material handling emission sources at the site, such as conveyors, fuel/ash piles, and material unloading facilities. White Stallion's air quality permit authorizes the receipt, storage, and handling of very large quantities of materials at the proposed power plant, including 5,000,000 tons per year ("tpy") of coal, 5,000,000 tpy of petroleum coke, and 2,000,000 tpy of limestone. The air quality permit also authorizes the handling of 1,500,000 tpy of fly ash and 800,000 tpy of bed ash, which are waste products resulting from the combustion of coal and petroleum coke. These materials when received and handled at the proposed power plant will result in particulate matter emissions, including emissions of coal dust and petroleum coke dust. Therefore, the locations of the emission points associated with the handling of this material are very relevant. Most of the emission sources that have moved are associated with the receipt and handling of these large quantities of materials. Only air dispersion modeling can determine the net effect of moving 73

emission points on off-property impacts in this case.

4. The off-property impacts resulting from the emission of pollutants from the material handling facilities will be different from the impacts resulting from the emission of pollutants from the main stacks. The off-property impacts from all emission sources are affected by the release height of the emissions, among other factors, such as exit velocity and temperature. For example, the main stacks are 487 feet tall. The maximum emission impacts from the main stacks (taller sources) typically occur farther from the source whereas the maximum emission impacts from a source with a shorter release height typically occurs closer to the source. This is because emissions from the main stacks are influenced by a higher exit velocity, temperature, and height. Material handling facilities are typically associated with shorter release heights. In this context, though, "shorter release height" does not necessarily mean less emissions or that these sources are less important for modeling purposes or regulatory compliance. By moving the shorter release height sources closer to a property line it is likely that the emission impacts in the nearby off-property area will increase.

5. One of the 73 emission sources that moved is the Railcar Unloading Building (EPN DCRAILUL or Entry Number 20 on Exhibit D-3 to my prior affidavit). This emission source represents the third largest emitter of particulate matter at the proposed White Stallion power plant (the main stacks represent the first and second largest emitters) and it was moved approximately 788 meters from the middle of the property to a location very close to the property line. Since emission impacts are determined at off-property locations, the movement of an emission source closer to a property line will likely increase its off-property emission impacts. Another of the 73 emission sources that moved is Conveyor 3 (EPN CONV3 or Entry Number 38 on Exhibit D-3 to my prior affidavit). This emission source is a conveyor used for transporting materials. By moving the Railcar Unloading Building farther from the material storage piles, the length of this conveyor must be increased. Emission rates from conveyors are based in part on conveyor length and the equations used to calculate emission rates for conveyors are found in TCEQ guidance. See Attachment 1. For every additional 300 feet of conveyor length (approximately 91 meters), the emission rate is increased. The emission rate from this conveyor will increase. An increase in emission rate will affect the emission impact caused by this source.

6. In my opinion, the movement of emission sources closer to the property line and the lengthening of the conveyors are material changes and warrant re-modeling the potential emissions impacts associated with the proposed plant. Without modeling the emissions from the sources as they would be located on White Stallion's new site plan, it is not possible to determine whether the net effect would be a violation of one or more of the federal or state clean air standards.

Further affiant sayeth not."

Roberto Gasparini, Ph. D.

SUBSCRIBED AND SWORN to before me, the undersigned notary, on this the 23rd day of May, 2011, to which witness my hand and official seal.

Jeana Matetzschk

Notary Public, State of Texas

May 1996

CHEER Workshop

May 16, 1996

printed on
recycled paper

New Source Review Division

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Attachment 1

1.5 lb / ton	PEDCo	uncontrolled factor for phosphate rock transfer and loading (apply control efficiencies of 90-95%)
neg-0.2 lb\ton	PEDCo "Evaluation of Fugitive Dust from Mining" PEDCo Environmental, Cincinnati, Ohio, (prepared for EPA) April, 1976.	phosphate rock
0.04 -0.96 lb PM/ ton	"Reasonably Available Control Measures for Fugitive Dust Sources" Ohio EPA, Office of Air Pollution Control, Columbus, Ohio, Sept 1980. Reference: "Technical Guidance for Control of Industrial Process Fugitive Partic8late Emissions", PEDCo, for EPA, EPA-450/3-77-010, March 1977	Conveying and transfer of coal.
0.02 lb PM/ ton	"Reasonably Available Control Measures for Fugitive Dust Sources" Ohio EPA, Office of Air Pollution Control, Columbus, Ohio, Sept 1980. Reference: "Fugitive Emissions from integrated Iron and Steel Plants". Bohn, Cuscino & Cowher, Midwest Research Institute, Kansas City, MO for EPA, EPA 600/2-78-050. March 1978	Conveying and transfer of coal.
0.02 lb PM/ ton	"Reasonably Available Control Measures for Fugitive Dust Sources" Ohio EPA, Office of Air Pollution Control, Columbus, Ohio, Sept 1980. Reference: "Evaluation of Fugitive Dust Emissions from Mining", PEDCo for EPA, Cinncinnati, OH	Conveying and transfer of coal.
0.8 lb PM/ ton	"Reasonably Available Control Measures for Fugitive Dust Sources" Ohio EPA, Office of Air Pollution Control, Columbus, Ohio, Sept 1980.	Transfer (spillage) of coal
$EF=\frac{(0.0018)(\frac{S}{5})(\frac{u}{5})(\frac{H}{10})}{(\frac{M}{2})^2} lbTSP/ton$	"Technical Guidance Document for Estimating Fugitive Dust Impacts from Coal Handling Operations - Volume 2" Howroyd (Dames & Moore) for US Dept of Energy Office of Scientific and Techncial Information, DOE/RG/10312-1 , Sept 1984. Reference: Bohn of MRI, 1978.	Conveyor transfer (enclosed); Transfer station enclosures are projected to have an effective control of 90%. For an open conveyor transfer, increase emissions by a factor of 10. S = silt content (%); w = wind speed (mph) H = drop height (ft); M = moisture content (%)
$E=k(0.0032)\frac{(U/5)^{1.3}}{(M/2)^{1.4}}(lb/ton)$	AP-42, Ch 13, 13.2.4-3	For batch or continous drop points;k=particle size multiplier; U=wind speed in mph; M=moisture content (%); Equation degrades if silt and moisture content of coal is outside the parameters that were used to derive the equation.

$$E=k(0.0032)\frac{(U/5)^{1.3}}{(M/2)^{1.4}}(lb/ton)$$

for BEST ESTIMATE of Transfer Operations.

$$E=k(0.0032)\frac{(U/5)^{1.3}}{(M/2)^{1.4}}(lb/ton)$$

for BEST ESTIMATE of Conveying Operations
(Use this equation for each 100 yards of conveyor length.)

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*

RECEIVED 12/21/10

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 17, 2010

To: Persons on the attached mailing list

Re: Motions for Rehearing concerning White Stallion Energy Center, LLC; Air Quality Permit No. 86088; PSD-TX-1160, PAL 26, and HAP 28; TCEQ Docket No. 2009-0283-AIR; and SOAH Docket No. 582-09-3008.

This letter is in response to Motions for Rehearing (Motions) concerning the above-referenced matter. Complete copies of the filings may be obtained from the Office of Chief Clerk, TCEQ, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087.

Section 80.272 of 30 Texas Administrative Code applies to the Motions. This letter is to notify all persons that, according to the Chief Clerk's records, the Motions for Rehearing overruled by operation of law on December 8, 2010. If you have any questions about this matter, please contact Elaine Lucas, Assistant General Counsel, at (512) 239-6215.

Very truly yours,

Les Trobman
General Counsel

Mailing List

Exhibit B

Mailing List
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SOAH Docket No. 582-09-3008

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JUDGE KEEPER: Mr. Weber, let me ask you a question; and, Mr. Lee, let me -- y'all -- and I don't -- let me acknowledge, Mr. Groten, that as we have conferred, felt the need to, if y'all have the need to confer, we'll be happy to give you that time as well.

MR. LEE: Okay.

JUDGE KEEPER: I do not want to step on your opportunity to speak to one another.

MR. GROTEN: We're fully communicated.

JUDGE KEEPER: Okay.

MR. GROTEN: Thank you, Judge.

JUDGE KEEPER: And that goes for all counsel.

Mr. Weber, if the ruling were that -- well, let me back up.

If what Mr. Weber's witness -- excuse me -- if what Mr. Lee's witness were to testify would be that there is no impact or relatively little impact in the movement of these sites, then where would that leave you as far as the evidence is concerned?

MR. WEBER: That would leave me without having had the opportunity to get the Executive Director's opinion on this --

JUDGE KEEPER: Uh-huh.

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MR. WEBER: -- who's responsible for modeling review; --

JUDGE KEEPER: Uh-huh.

MR. WEBER: -- prevent me having the opportunity to cross the Executive Director's, you know, testimony about that or modeling of it or review of modeling; have lost the opportunity for my client to have presented that evidence in its direct case, our own modeling; and it goes on and on.

JUDGE KEEPER: Right.

MR. WEBER: So several opportunities. It's not just about whether I get the opportunity for live rebuttal of my own. I've lost lots of opportunities here, and that opportunity starts with the process.

If they want to -- another option is they can withdraw and remand this. I know nobody plans to do that, and I'm not suggesting that's the proper thing at this point. I suggested it the first day because I did think if they were going forward on some other application, that the proper remedy was for them to withdraw because they were amending their application. All I've shown is that there are more than one applications floating around.

MR. LEE: And, your Honor, I mean, I

1326

think I heard Mr. Weber say he's somehow precluded from cross-examining Executive Director witnesses about that -- about this. Of course, that's not true. He could have cross-examined them about this.

But I would point out that if his -- you know, you asked him where would this leave him if we were to proceed and ask just one or two questions from this witness about what I believe is self-evident from these documents. If Mr. Weber's legal argument is simply that the emission sources are in different places on these two pieces of paper and that's all he cares about, well, then he would not be harmed at all by testimony about the significance of impacts between the two drawings. But clearly, that's not his only argument.

His argument is they're different and, therefore, the impacts would be different, and we have to start this all over again. That's the issue that he has chosen to raise and make a big deal out of in this hearing. It's perfectly appropriate for us to ask this witness about it, or we could go back and try to strike every part of the record in which this is discussed.

JUDGE KEEPER: That's not an attractive option.

1327

MR. LEE: I agree.

JUDGE KEEPER: So, Mr. Weber, let me tell you just in advance that under the rules, you get the final word since it's your objection, and we'll get to you in just a second. But we'd like to have the opportunity to talk once again, and then we'll get back to you.

MR. WEBER: Thank you.

JUDGE QUALTROUGH: May I ask one more question?

JUDGE KEEPER: Sure.

JUDGE QUALTROUGH: Is he going to put any modeling on?

MR. LEE: No, Your Honor. This is -- I'm simply going to ask him, from looking at these two diagrams, based on his professional experience, does he think the modeled impacts would be significantly different. It's something that's self-evident, and we just need to get something in the record on it because the implication has been running through this whole hearing.

(Discussion off the record)

JUDGE KEEPER: Mr. Weber?

MR. WEBER: Thank you, Your Honor.

Just to summarize, we've obviously

Exhibit C

1 talked about this a lot. I do think, first of all,
2 that this exceeds the scope of proper rebuttal. It
3 goes well beyond the testimony that I elicited, and I
4 can't control what he infers from it.
5 Secondly, I do think it is relevant when
6 an applicant signs a sworn form and submits it as part
7 of the air application saying this is our application
8 and then subsequently files with other agencies sworn
9 statements that says something else is their
10 application. That's why I offered this into evidence,
11 and I had to prove that they were different.
12 I don't think it's relevant to then go
13 on after they got up there and -- Mr. Rotondi got up
14 there and testified and said, "This is the only
15 application that my development committee has
16 approved." For them then to come on board and to try
17 to offer testimony that talks about the impacts, I
18 don't think that's relevant.
19 Finally, I also point out again that
20 they failed to supplement their Rule 194 disclosures,
21 and they're under a duty to do so. They've had ample
22 opportunity to do it. They've done it for other
23 reasons but haven't done it here.
24 And, yes, I'm harmed when an applicant
25 submits an application to the TCEQ and it gets

1 reviewed and then I don't get an opportunity to get
2 the Executive Director's opinion about that. I don't
3 get an opportunity to offer my own prefiled testimony
4 about that, and he says I could have, you know,
5 cross-examined the Executive Director's witnesses.
6 Not on modeling that they may have submitted in
7 support of an impacts analysis related to some
8 application, some site plan that's not part of their
9 application. That's not correct, and that's not what
10 I argued.
11 So those are my three objections.
12 JUDGE KEEPER: We're prepared to rule.
13 We sustain your objection.
14 MR. WEBER: Thank you.
15 JUDGE KEEPER: And, White Stallion, if
16 you wish, you may make an offer of proof in writing,
17 and the record will be left open for that purpose.
18 And not for the admission of this as evidence but as
19 the acceptance of an offer of proof.
20 MR. LEE: Okay. May I confer just for a
21 moment before we move on?
22 JUDGE KEEPER: Yes.
23 MR. LEE: Thank you, Your Honor. We'll
24 move on.
25 JUDGE KEEPER: Okay. Let's go off the

1 record for just a second.
2 (Discussion off the record)
3 JUDGE KEEPER: Let's go back on the
4 record. Please proceed.
5 MR. LEE: Thank you, Your Honors.
6 Q (BY MR. LEE) Mr. Cabe, I just have -- I just
7 want to ask you one question to clarify something in
8 your rebuttal testimony.
9 Could you turn to Page 24 of 81 of White
10 Stallion Exhibit 600?
11 A Okay.
12 Q And if you could look at the question and
13 answer that begins on Line 3. Just let me know when
14 you've had a chance to.
15 JUDGE KEEPER: What line was that,
16 Patrick?
17 MR. LEE: Starting on Line 3 of Page 24.
18 A Yes.
19 Q (BY MR. LEE) Could you just paraphrase what
20 you say there?
21 A I'm talking about what the modeling results
22 or what model concentration one might expect if the
23 emissions from the railcar baghouse activity had been
24 recalculated with a more appropriate method, and I was
25 simply saying that concentrations would not be as high

1 as Mr. Hunt would have modeled.
2 Q And the point of clarification I just wanted
3 to make is, why were you able to answer that question
4 in the affirmative?
5 A Well, I actually did remodel with
6 recalculated railcar emissions and did determine that
7 those concentrations would be lower. In fact, there
8 wouldn't have been a model concentration exceeding the
9 increment.
10 Q Okay. And when you did that modeling run,
11 did you correct the discrepancy in the heights of the
12 bars unloading --
13 MR. WEBER: Your Honor, I'm going to --
14 Q (BY MR. LEE) -- source?
15 MR. WEBER: -- object because once
16 again, we don't have -- these opinions have not been
17 disclosed as part of their Rule 194 disclosures.
18 MR. LEE: Your Honor --
19 MR. WEBER: And this is -- they're
20 talking about their prefiled rebuttal testimony and
21 trying to clarify it. That's got nothing to do with
22 anything that I elicited during testimony in this
23 proceeding. They've had an opportunity to offer this
24 testimony. If they wanted to somehow, you know, offer
25 additional opinions about this topic, then they're

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

MAY 13 2011

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

RE: White Stallion Energy Center, Air Permit Nos. PSDTX1160, PAL26, and HAP28, Matagorda County, Texas

Dear Mr. Hagle:

We are in receipt of four (initial and amended) permit applications submitted by White Stallion Energy Center (WSEC) to various state and federal agencies, in support of permitting activities for WSEC's proposed power plant facility in Matagorda County, Texas. The permit applications include the 1) air quality permit application initially submitted on September 5, 2008, (with subsequent amendments) to the Texas Commission on Environmental Quality (TCEQ); 2) Texas Pollutant Discharge Elimination System permit application initially submitted on February 20, 2009, to the TCEQ; 3) dredge and fill permit application initially submitted in September 2009, to the Department of the Army, Galveston District Corps of Engineers (Corps); and 4) revised dredge and fill permit application dated October 25, 2010, and submitted to the Corps in November 2010. A copy of each site plan is enclosed. In each permit application, the site plans appear to have changed. What site plan does TCEQ recognize as the applicable site plan for this facility?

WSEC obtained an air quality permit from TCEQ on December 16, 2011. Prior to permit issuance, WSEC's permit application, the site plan, and the associated air modeling were subject to public review and comment. If WSEC elects to change the site plan from the site plan represented by WSEC in the air quality permit, EPA expects that this substantive change would also be subject to public review and comment. A change to the site plan could have an impact on the air modeling, and ultimately an impact on human health and the environment. Or, the change in the site plan may have no impact at all. That answer has not been determined yet. But EPA and the public should be able to review and comment on this issue.

To that end, EPA hopes that such a change to the site plan would be done through a permit amendment (offering public review and comment) and not a permit alteration (which does not afford EPA and public review and comment). Otherwise, we're left with a "bait-and switch"

Exhibit D

scenario where a source can propose one site plan during the original permit application process, navigate through Texas' public participation process for permits, obtain a permit, and then immediately change the site plan with no EPA and public review in order to obtain other permits that may be necessary for construction of the facility. This raises significant issues about meaningful public participation in the permit decision-making process.

Please contact me at (214) 665-7250 or Stephanie Kordzi, of my staff, at (214) 665-7520, if you have questions, or would like to discuss this further. We look forward to working with you on this matter.

Sincerely yours,

Jeff Robinson
Chief
Air Permits Section

Enclosures

cc: Mr. Randy Hamilton (MC-163)
Texas Commission on Environmental Quality

Mr. Randy Bird
Chief Operating Officer
White Stallion Energy Center LLC
1302 Waugh Drive, Suite 896
Houston, TX 77019-3908

Mr. John Blevins
Director
Compliance Assurance and
Enforcement Division

Attachment 5

Filed
11 May 2 P2:52
Amalia Rodriguez-Mendoza
District Clerk
Travis District
D-1-GN-11-000011

McElroy, Sullivan & Miller, L.L.P.
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May 2, 2011

Via Electronic Filing

Ms. Amalia Rodriguez-Mendoza
District Clerk, Travis County
Travis County Courthouse
1000 Guadalupe, Room 327
Austin, Texas 78701

Re: Cause No. D-1-GN-11-000011, *Environmental Defense Fund, Inc. v. Texas Commission on Environmental Quality*, 201st Judicial District, Travis County, Texas

Dear Ms. Rodriguez-Mendoza:

Please find enclosed new Exhibits D and D-1 to Environmental Defense Fund, Inc.'s Motion for Remand that was filed on March 4, 2011, in the above-referenced cause number. Please replace the current Exhibit D (Affidavit of Roberto Gasparini, Ph.D.) and Exhibit D-1 to Dr. Gasparini's affidavit with the new attached exhibits. The new exhibits correct typographical errors in the affidavit and a copying error with Exhibit D-1. The remaining exhibits to Dr. Gasparini's affidavit, Exhibits D-2 and D-3, are unchanged. By copy of this letter we are also hand delivering new Exhibits D and D-1 to Judge Livingston and the parties as indicated below.

Thank you for your consideration and please call if there are any questions.

Respectfully submitted,

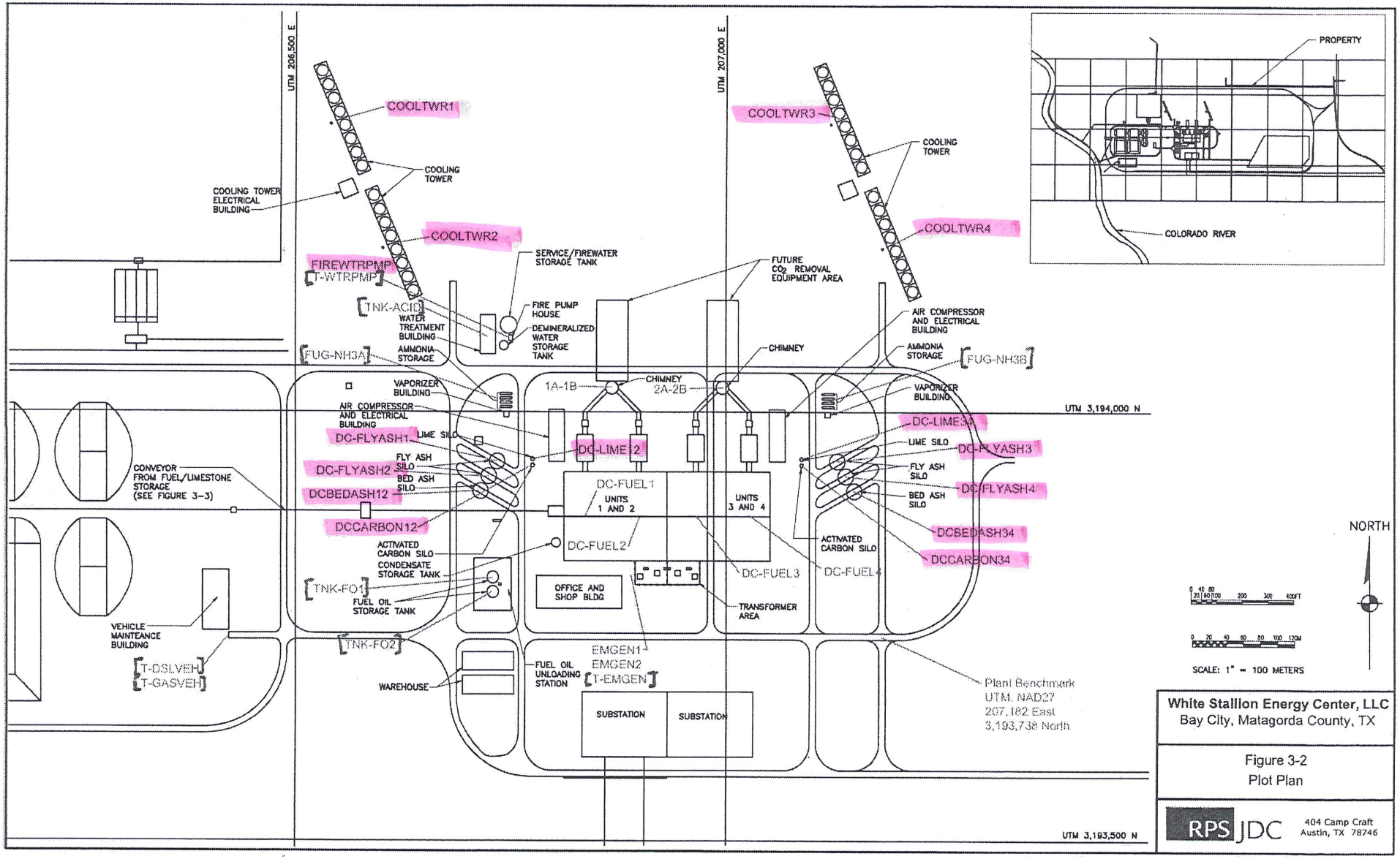
Thomas M. Weber
Attorney for Environmental Defense Fund, Inc.

TMW/jam
Attachments

cc: The Honorable Lora Livingston
Ms. Nancy Olinger
Mr. Brian Berwick
Ms. Cynthia Woelk
Mr. Eric Groten
Ms. Paulina Williams
Mr. Ilan Levin
Mr. Pete Schenkkan

SERVICE LIST

Party	Representative
Texas Commission on Environmental Quality (Defendant)	Ms. Nancy Olinger Mr. Brian E. Berwick Ms. Cynthia Woelk Assistant Attorneys General Office of the Attorney General of Texas Environmental Protection Division 300 W. 15th Street Mail Code 015, 10th Floor P.O. Box 12548, Capitol Station Austin, Texas 78711-2548 Telephone: 512-463-2012 Facsimile: 512-320-0911 Nancy.olinger@oag.state.tx.us Brian.berwick@oag.state.tx.us Cynthia.woelk@oag.state.tx.us
Environmental Defense Fund, Inc. (Plaintiff)	Mr. Thomas M. Weber Mr. Paul Tough McElroy, Sullivan & Miller, L.L.P. 1201 Spyglass, Suite 200 Austin, Texas 78746 Telephone: 512-327-8111 Facsimile: 512-327-6566 tweber@msmtx.com ptough@msmtx.com
White Stallion Energy Center, LLC (Intervenor)	Mr. Eric Groten Ms. Paulina Williams Vinson & Elkins, L.L.P. 2801 Via Fortuna, Suite 100 Austin, Texas 78746 Telephone: 512-542-8709 Facsimile: 512-236-3272 egroten@velaw.com pwilliams@velaw.com



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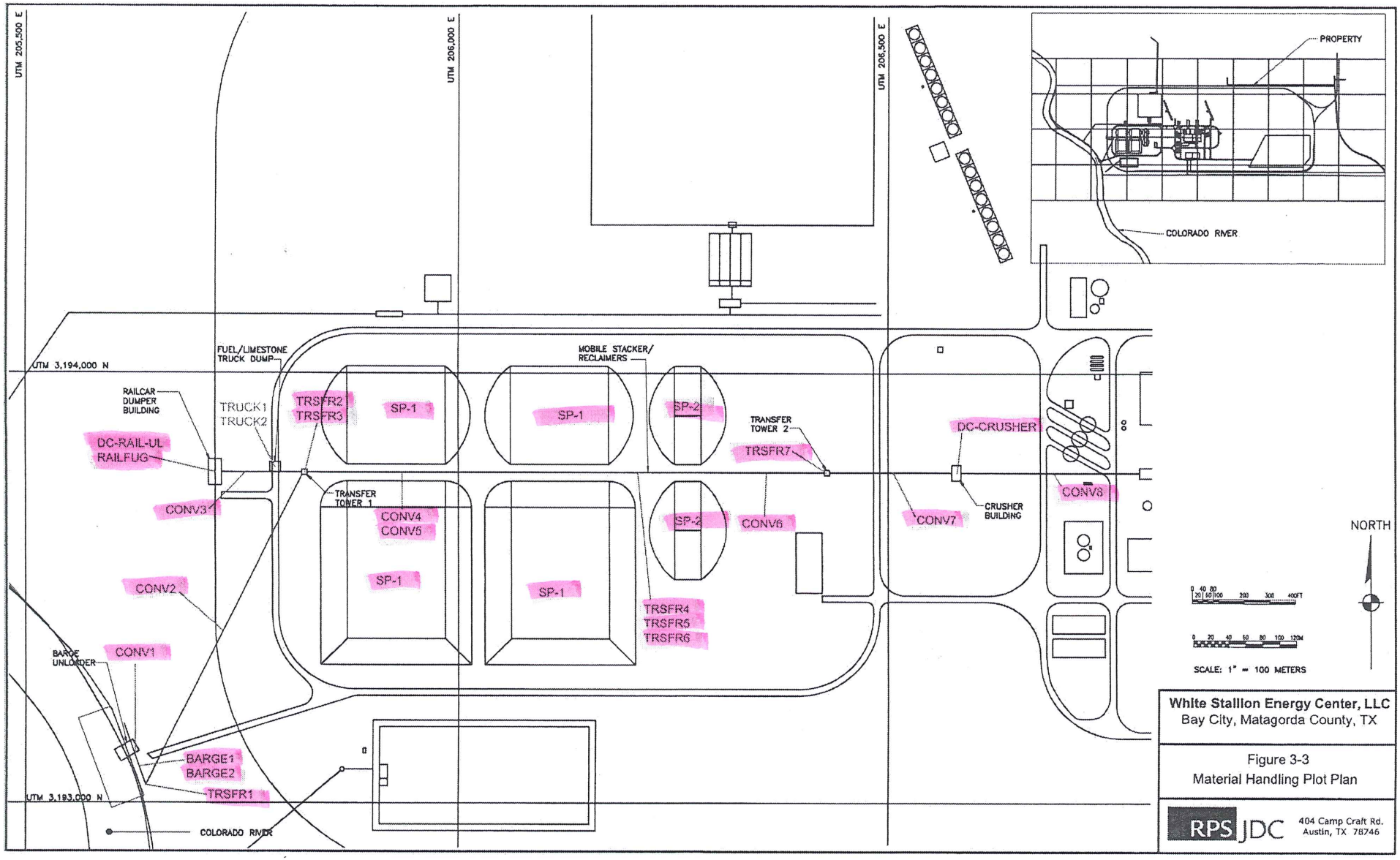
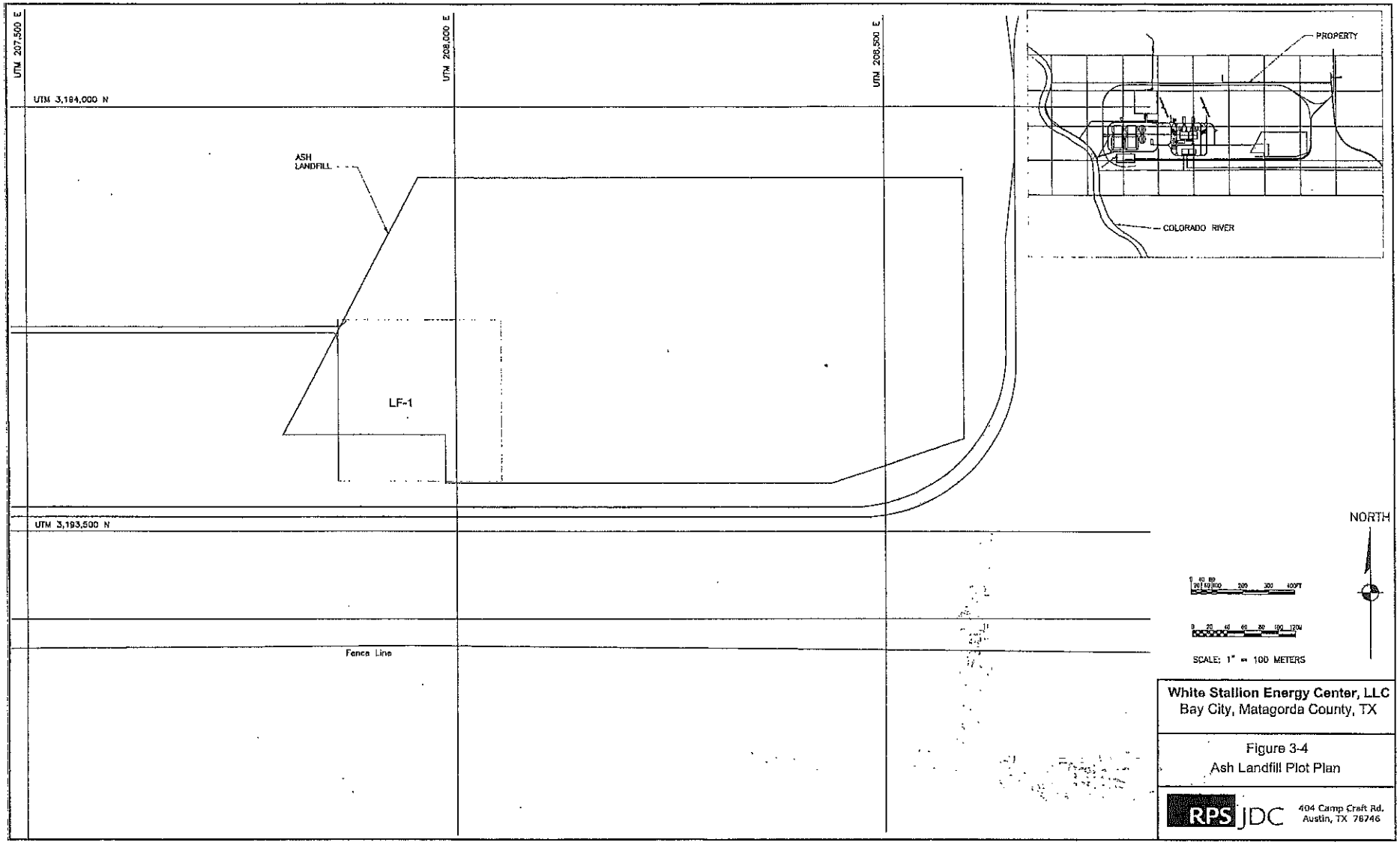
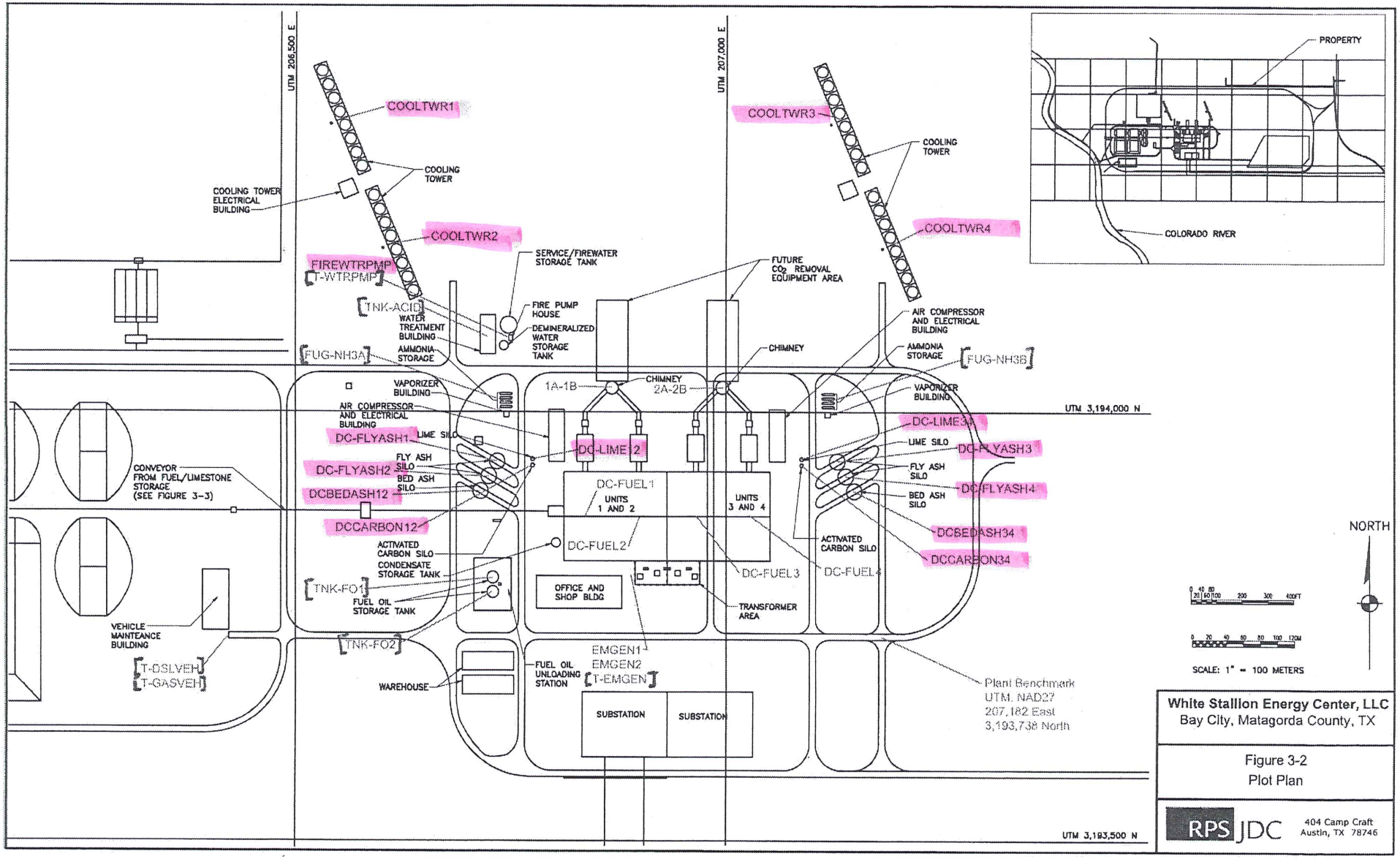


White Stallion Energy Center, LLC
Bay City, Matagorda County, TX

Figure 3-3
Material Handling Plot Plan

RPS JDC
404 Camp Craft Rd.
Austin, TX 78746


UTM 207,500 E
UTM 208,000 E
UTM 208,500 E
UTM 3,194,000 N
UTM 3,193,500 N
ASH LANDFILL
LF-1
Fence Line
PROPERTY
COLORADO RIVER
NORTH
SCALE: 1" = 100 METERS
White Stallion Energy Center, LLC
Bay City, Matagorda County, TX
Figure 3-4
Ash Landfill Plot Plan
RPS JDC
404 Camp Craft Rd.
Austin, TX 78746



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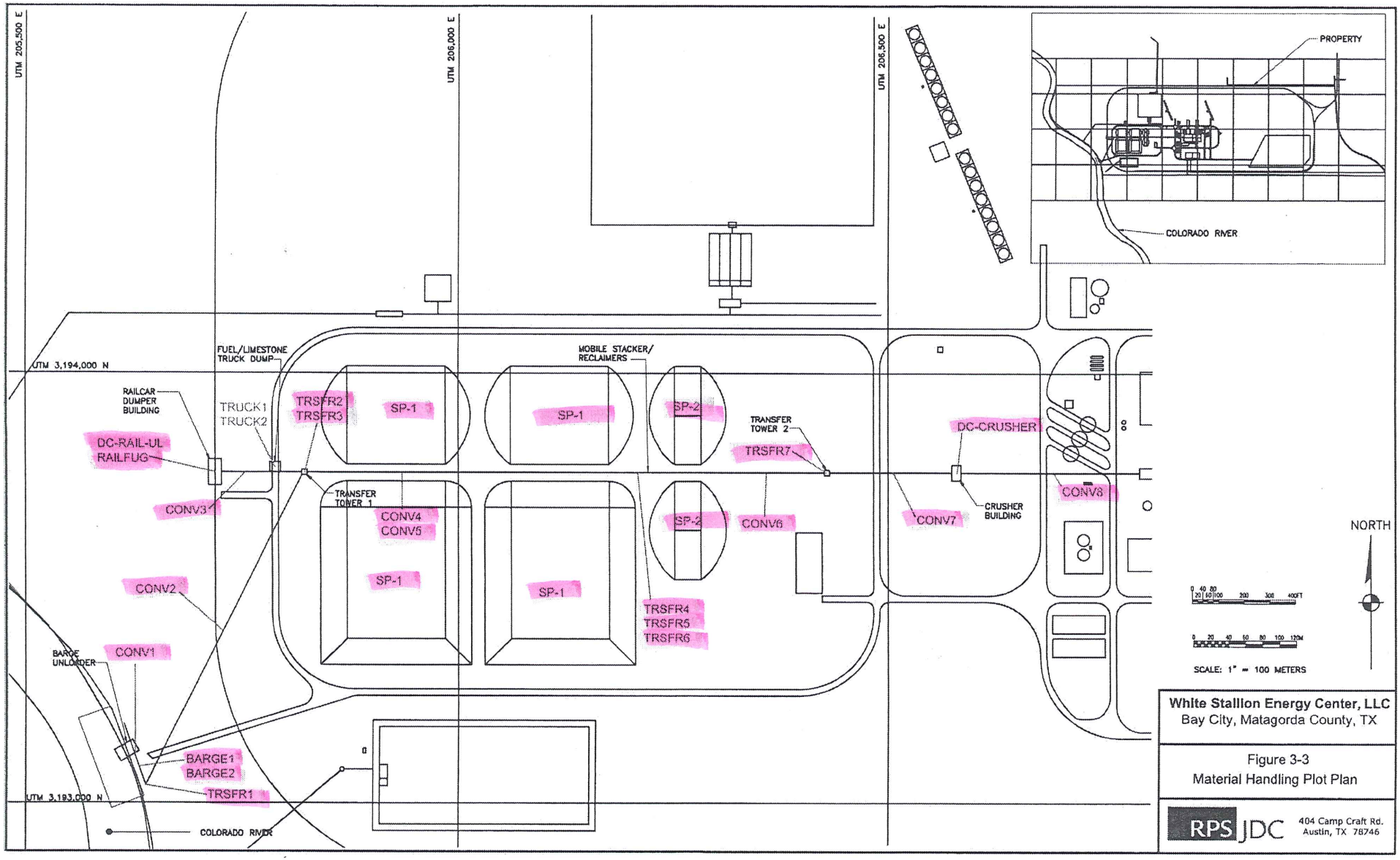
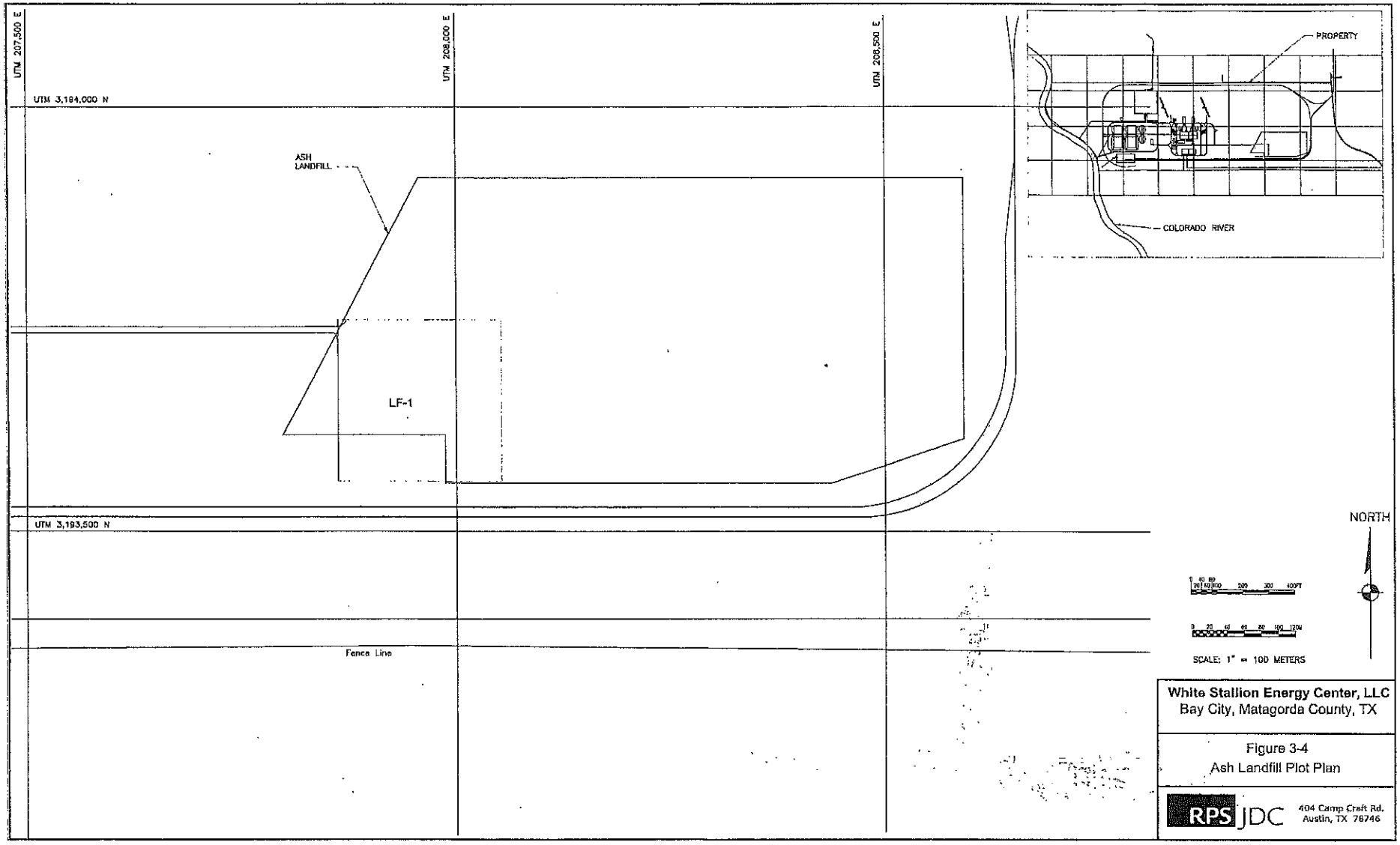


White Stallion Energy Center, LLC
Bay City, Matagorda County, TX

Figure 3-3
Material Handling Plot Plan

RPS JDC
404 Camp Craft Rd.
Austin, TX 78746


UTM 207,500 E
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White Stallion Energy Center, LLC
Bay City, Matagorda County, TX
Figure 3-4
Ash Landfill Plot Plan
RPS JDC
404 Camp Craft Rd.
Austin, TX 78746

Attachment 6

SOAH DOCKET NO. 582-09-3008
TCEQ DOCKET NO. 2008-0283-AIR

APPLICATION OF	**§**	**BEFORE THE TEXAS COMMISSION**
WHITE STALLION ENERGY	**§**	
CENTER, LLC FOR STATE AIR	**§**	**ON**
QUALITY PERMIT NOS. 86088,	**§**	
PSD-TX-1160, HAP 28, AND PAL 26	**§**	**ENVIRONMENTAL QUALITY**

DIRECT TESTIMONY OF DR. ROBERTO GASPARINI, PH.D
(Submitted by Environmental Defense Fund, Inc.)

SOAH DOCKET NO. 582-09-3008
TCEQ DOCKET NO. 2008-0283-AIR

APPLICATION OF	**§**	**BEFORE THE TEXAS COMMISSION**
WHITE STALLION ENERGY	**§**	
CENTER, LLC FOR STATE AIR	**§**	**ON**
QUALITY PERMIT NOS. 86088,	**§**	
PSD-TX-1160, HAP 28, AND PAL 26	**§**	**ENVIRONMENTAL QUALITY**

DIRECT TESTIMONY OF DR. ROBERTO GASPARINI, PH.D
(Submitted by Environmental Defense Fund, Inc.)

I. **<u>, EDUCATION AND WORK EXPERIENCE</u>.**

Q: PLEASE STATE YOUR FULL NAME.

A: Roberto Gasparini.

Q: BY WHOM ARE YOU EMPLOYED?

A: I work at Spirit Environmental in Houston, Texas as a Project Director of air quality consulting.

Q: WHAT TYPE OF WORK DO YOU PERFORM AT SPIRIT ENVIRONMENTAL?

A: I prepare air permit applications, perform atmospheric dispersion modeling, and provide general environmental compliance support.

Q: HOW LONG HAVE YOU BEEN AT SPIRIT ENVIRONMENTAL?

A: Since January 2012.

Q: WHERE DID YOU WORK PRIOR TO JOINING SPIRIT ENVIRONMENTAL?

A: Previously I was employed as a managing consultant at Source Environmental. I was also a partner at Source.

Q: HOW LONG HAD YOU BEEN WITH SOURCE?

A: Over six years. I started in June of 2005.

Q: HOW LONG WERE YOU A PARTNER AT SOURCE?

A: Approximately three years.

Q: HOW LONG WERE YOU A MANAGING CONSULTANT AT SOURCE?

A: Approximately five years.

Q: WHAT TYPE OF WORK DID YOU PERFORM AT SOURCE ENVIRONMENTAL?

A: Similar to my work at Spirit. I assisted in the preparation of over a dozen air permit applications with many involving air dispersion modeling.

Q: DID THE DISPERSION MODELING INVOLVE THE USE OF AERMOD?

A: Yes, most of the air dispersion modeling involved the use of AERMOD.

Q: CAN YOU DESCRIBE FOR THE COMMISSION THE TYPE OF AIR QUALITY PERMIT APPLICATIONS THAT YOU HAVE WORKED ON THAT INVOLVE AIR DISPERSION MODELING?

A: Basically the types of applications that have required air dispersion modeling have been associated with new source review or NSR permit applications, whether they are minor or major sources, or nonattainment.

Q: HAVE YOU PREVIOUSLY PERFORMED AIR DISPERSION MODELING FOR PSD REVIEW?

A: Yes. Though running the modeling itself is basically the same for most applications. You still have to represent your sources, input stack height, release height, and emission rates. You still have to use appropriate meteorological data and terrain data. The concepts are essentially the same. How you dictate and analyze the output from the model is where the differences arise between state and federal analyses.

Q: WHO ARE YOUR CLIENTS TYPICALLY?

A: Typically, the work that I do is on behalf of industrial clients assisting them in meeting their regulatory obligations, including permitting and compliance.

Q: PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.

A: I received a Bachelor of Science in Meteorology from Texas A&M University in December of 1999. I continued my studies there in graduate school and received my Masters of Science in Atmospheric Sciences in August of 2002, and then my Ph.D. in Atmospheric Sciences in May of 2005.

Q: HAVE YOU PREVIOUSLY PROVIDED EXPERT TESTIMONY BEFORE SOAH?

A: Yes, I have testified before SOAH on modeling issues.

Q: I AM HANDING YOU A DOCUMENT THAT HAS BEEN MARKED AS EDF EXHIBIT 201. PLEASE IDENTIFY EDF EXHIBIT 201.

A: EDF Exhibit 201 is a copy of my resume.

Q: IS THE INFORMATION CONTAINED IN EXHIBIT 201 TRUE AND CORRECT?

A: Yes.

EDF OFFERS EXHIBIT 201, THE RESUME OF ROBERTO GASPARINI PH.D

Q: DR. GASPARINI, COULD YOU BRIEFLY SUMMARIZE WHAT WORK YOU WERE ASKED TO PERFORM ON BEHALF OF EDF IN THIS CASE?

A: I was retained initially by EDF to review and analyze certain air dispersion modeling data, site plans, and other materials filed by White Stallion Energy Center, LLC ("White Stallion" or "WSEC") with the TCEQ in support of White Stallion's application for air quality permits for a 1,320-MW power plant to be located in Matagorda County, Texas. I was also asked to review additional information regarding the same plant filed by White Stallion in support of an application with the United States Army Corps of Engineers (the "Corps"). Finally, I was asked to perform some air dispersion modeling.

Q: YOU STATED YOU WERE RETAINED INITIALLY TO REVIEW AND ANALYZE SOME MATERIAL. CAN YOU BE MORE SPECIFIC ABOUT WHAT YOU WERE INITIALLY ASKED TO DO?

A: Yes, but some background is appropriate. On September 5, 2008, White Stallion filed an application for air quality permits from the TCEQ. In December of 2008, White Stallion submitted an air quality modeling analysis based on a specific site plan for the proposed power plant. The air dispersion modeling that White Stallion performed in support of its application for an air quality permit was based only on that specific site plan ("Air Permit Site Plan"). Shortly after the TCEQ issued its Final Order on October 19, 2010, a mere six days later, it appears that White Stallion changed the site plan for its power plant. I was asked to review the changed site plan and ultimately determine its air quality impacts.

Q: WHY DO YOU BELIEVE THAT WHITE STALLION CHANGED ITS SITE PLAN?

A: I believe the site plan provided to the Corps represents the most up-to-date site plan for the proposed power plant. At the same time that White Stallion's air permit application was still at the TCEQ, White Stallion had an application before the Corps for a wetlands permit. In November of 2010, White Stallion provided the Corps with a site plan dated October 25, 2010 ("October 25th Site Plan"). In fact, it is my understanding that the Corps has now issued White Stallion its wetlands permit based on the updated site plan.

Q: IS IT SIGNIFICANT THAT THE SITE PLAN FOR WSEC HAS CHANGED AND IF IT IS EXPLAIN WHY?

A: Yes. It is significant because the air dispersion modeling is necessarily linked to the site plan.

Q: WHAT IS DISPERSION MODELING?

A: Atmospheric dispersion modeling is a mathematical tool that simulates the effects of dispersion on emissions of pollutants in the atmosphere and predicts the concentrations of pollutants at certain specified points, which are commonly called "receptors."

Q: CAN YOU EXPLAIN HOW DISPERSION MODELING AND A SITE PLAN ARE LINKED?

A: Sure. The layout of the site is very important to the modeling because it is an input to the model. White Stallion's air dispersion modeling was performed using "AERMOD," an air dispersion modeling program accepted by TCEQ for purposes of predicting air quality impacts resulting from a proposed emission source. Data input into AERMOD includes the locations, types of emissions sources, and the emission rates of the various air pollutants that will be released from the proposed power plant as well as meteorological data. Using these input data, AERMOD uses sophisticated mathematical formulas to predict the ground-level concentration of the various air pollutants at receptor grid points designated by the user, which in this context would be off-property locations (i.e. beyond the plant property). The output data generated by the model is then analyzed to determine whether a proposed source of air pollutants complies with applicable air quality requirements, which in this case include requirements under the federal Clean Air Act and TCEQ's rules. Moving the locations of emissions sources changes the input data used in AERMOD. So when changes occur to the locations of emissions sources used as modeling input data, the modeling output data will also change.

Q: WHY MODEL IMPACTS?

A: White Stallion is required to perform air dispersion modeling in order to demonstrate compliance with the applicable national air quality standards such as NAAQS and PSD Increments, state property line standards and state effects screening levels ("ESLs"). Under TCEQ's PSD rules, which incorporate 40 CFR § 52.21(k), White Stallion must demonstrate that it will not "cause or contribute" to air pollution in violation of any NAAQS or PSD Increment. In addition, the Texas Clean Air Act ("TCAA") requires that TCEQ find no indication that the emissions from White Stallion will contravene the intent of the TCAA, including protection of the public's health and physical property. In practice, the TCEQ relies on the NAAQS/PSD demonstrations, state property line demonstrations and ESLs, among other things, to make this finding. All require dispersion modeling to predict the off-property impacts, which are subsequently compared to the applicable air quality standards or ESLs to determine compliance.

Q: CIRCLING BACK TO THE CHANGES TO THE SITE PLAN, CAN YOU EXPLAIN THOSE CHANGES?

A: Yes, I compared the Air Permit Site Plan and White Stallion's air dispersion modeling related to that site plan to the October 25th Site Plan that was submitted to the Corps in November 2010. The October 25th Site Plan is materially different from the Air Permit Site Plan. When the two plans are compared, it is clear that numerous emissions sources are at different locations. Based upon my review, 73 out of a total of 84 emissions points used in White Stallion's air dispersion modeling are depicted at different locations in the October 25th Site Plan. Approximately 64 of these emissions points are moved one hundred (100) meters or more and two (2) emissions points are moved more than seven hundred fifty (750) meters.

Q: I AM HANDING YOU A DOCUMENT THAT HAS BEEN MARKED AS EDF EXHIBIT 202. PLEASE IDENTIFY EDF EXHIBIT 202.

A: That exhibit is a copy of the Air Permit Site Plan from White Stallion's air permit application. I have highlighted the emissions points that are at different locations when compared to the October 25th Site Plan. However, not all the emissions points that moved were listed by White Stallion on the Air Permit Site Plan.

EDF OFFERS EXHIBIT 202, HIGHLIGHTED AIR PERMIT SITE PLAN

Q: I AM HANDING YOU A DOCUMENT THAT HAS BEEN MARKED AS EDF EXHIBIT 203. PLEASE IDENTIFY EDF EXHIBIT 203.

A: That exhibit is a copy of the October 25th Site Plan submitted to the Corps by White Stallion.

Q: IS THE INFORMATION CONTAINED IN EXHIBIT 203 TRUE AND CORRECT?

A: Yes as far as I can tell.

EDF OFFERS EXHIBIT 203, OCTOBER 25TH SITE PLAN

Q: I AM HANDING YOU A DOCUMENT THAT HAS BEEN MARKED AS EDF EXHIBIT 204. PLEASE IDENTIFY EDF EXHIBIT 204.

A: That exhibit is a summary table of the emissions points that moved. I prepared the table based on my review of the different site plans.

Q: IS THE INFORMATION CONTAINED IN EXHIBIT 204 TRUE AND CORRECT?

A: Yes, based on the information available to me.

EDF OFFERS EXHIBIT 204, SUMMARY TABLE OF EPN LOCATIONS.

Q: WHAT TYPES OF POLLUTANTS DO THE MOVED EMISSIONS SOURCES EMIT?

A: All of the emissions sources that are at different locations under the October 25th Site Plan are sources of PM_{10}. One of the moved emissions sources is also a source of SO_2.

Q: ARE THERE ANY PARTICULAR EMISSIONS SOURCES THAT WERE MOVED THAT ARE SIGNIFICANT IN YOUR OPINION?

A: Yes.

Q: PLEASE IDENTIFY THOSE SOURCES.

A: One of the 73 emission sources that moved is the Railcar Unloading Building (EPN DCRAILUL or Entry Number 20 on my Summary Table of EPN Locations exhibit). This emission source represents the third largest emitter of particulate matter at the proposed White Stallion power plant (the main stacks represent the first and second largest emitters) and it was moved approximately 788 meters from the middle of the property to a location very close to the property line.

Q: WHY WAS THE MOVEMENT OF THAT EMISSION SOURCE CLOSER TO THE PROPERTY LINE SIGNIFICANT IN YOUR OPINION?

A: Since emission impacts are determined at off-property locations, the movement of an emission source closer to a property line will likely increase its off-property emission impacts.

Q: IS THERE ANOTHER EMISSION SOURCE THAT YOU WANT TO HIGHLIGHT?

A: Yes. Another of the 73 emission sources that moved is Conveyor 3 (EPN CONV3 or Entry Number 38 on my Summary Table of EPN Locations exhibit). This emission source is a conveyor used for transporting materials, such as the fuel used to generate electricity. By moving the Railcar Unloading Building farther from the material storage piles, the length of this conveyor must be increased. Also based on the drawing of the conveyor on the October 25th Site Plan, it appears that a bend was introduced in the system. The addition of a bend in the conveyor likely introduces a new transfer point (i.e. new emission point).

Q: WHAT IS THE SIGNIFICANCE OF INCREASING THE LENGTH OF A CONVEYOR?

A: Emission rates from conveyors, like Conveyor 3, are based in part on conveyor length. Based on TCEQ guidance, for every additional 300 feet of conveyor length (approximately 91 meters), the emission rate from a conveyor is increased. The lengthening of Conveyor 3 by more than 1,230 feet means that the emission rate from that source will increase. An increase in emission rate will affect the emission impact caused by this source and require an amendment of the application. Under 30 TAC § 116.116(b)(1)(C), an amendment is required if the change will cause an increase in the emission rate of any air contaminant.

Q: I AM HANDING YOU A DOCUMENT THAT HAS BEEN MARKED AS EDF EXHIBIT 205. PLEASE IDENTIFY EDF EXHIBIT 205.

A: This is an excerpt from a TCEQ document entitled "CHEER Workshop" that contains the equations used to calculate emission rates from conveyors. It confirms that for every additional 300 feet of conveyor length, the emission rate from a conveyor is increased.

Q: IS THE INFORMATION CONTAINED IN EXHIBIT 205 TRUE AND CORRECT?

A: Yes.

Q: IS THIS EXHIBIT THE TYPE OF INFORMATION TYPICALLY RELIED UPON BY EXPERT AIR DISPERSION MODELERS IN FORMULATING THEIR OPINIONS?

A: Yes.

EDF OFFERS EXHIBIT 205, EXCERPT FROM CHEER WORKSHOP.

Q: HAVE YOU FORMED AN OPINION ON WHAT EFFECT THE MOVEMENT OF EMISSIONS SOURCES WILL HAVE ON WHITE STALLION'S SOURCE IMPACT

ANALYSIS AND DEMONSTRATION REQUIRED BY FEDERAL AND STATE LAW?

A: Yes.

Q: WHAT IS THAT OPINION?

A: Without modeling the emissions from the sources as they would be located on White Stallion's new site plan (the October 25th Site Plan), it is not possible to determine whether the net effect would be an exceedance of one or more of the federal or state clean air act standards. Additionally, the movement of emission sources closer to the property line and the lengthening of conveyors are material changes and warrant re-modeling the potential emissions impacts associated with the proposed plant.

Q: DR. GASPARINI HAVE YOU PERFORMED ANY DISPERSION MODELING USING THE OCTOBER 25TH SITE PLAN?

A: Yes.

Q: CAN YOU DESCRIBE WHAT YOU DID?

A: Yes, in general I performed atmospheric dispersion modeling specific to PM_{10} using the October 25th Site Plan. I used input files generated by White Stallion and included within its air permit application submitted to the TCEQ. I then used the new emission source locations as identified on the October 25th Site Plan.

Q: DID YOU MAKE OTHER CHANGES TO THE APPLICANT'S INPUT FILES?

A: Yes. Besides adjusting the locations of the emissions sources to match the locations as identified on the October 25th Site Plan, I also made corresponding adjustments to building locations, sizes and orientations. Buildings create downwash, which affects the dispersion of emissions from nearby emission sources. I made no other changes to the input files except as necessary to reflect the new locations of the emissions sources. I used the same 5-year meteorological data as White Stallion and the same receptor grid, including removal of receptors from the barge unloading area to mirror what the Applicant did in its modeling. However, I did not adjust the emission rates from the various conveyors.

Q: WHAT IS DOWNWASH?

A: Downwash refers to the atmospheric effect that eddies or wakes created by a structure (like a building) have on the exhaust from a stack or vent (emission source). The structure distorts atmospheric flow in the nearby area. This distortion can then affect the predicted impacts associated with emissions sources.

Q: WHY DO YOU USE 5 YEARS OF METEOROLOGICAL DATA?

A: First, that is the standard number of years to use in PSD and NAAQS modeling. Second, that is the same number of years that White Stallion used in their modeling. Specifically,

we both used the same meteorological data incorporating the same roughness (medium) from 1983, 1984, 1986, 1987, and 1988.

Q: WHY DIDN'T YOU ADJUST THE EMISSION RATES FROM THE CONVEYORS?

A: To be conservative in my modeling. While some conveyors have lengthened and others have shortened based on the October 25th Site Plan, it appears that the overall length of the conveyors increased by approximately 300 meters, which would very likely result in an increase in emission rates. One conveyor, Conveyor 3, increases by about 1233 feet (about 376 meters). So I know that the emission rate from that source has increased. By modeling its emission rates based on the old Air Permit Site Plan the model actually under-predicts the air quality impacts, which is conservative.

Q: WHAT MODEL DID YOU USE?

A: AERMOD.

Q: WHAT WERE THE RESULTS OF YOUR MODELING?

A: Using the October 25th Site Plan, the model predicts exceedances of the 24-hour PSD Increment limit for at least PM_{10} in all 5 modeling years.

Q: WHAT IS THE 24-HOUR PSD INCREMENT LIMIT FOR PM_{10}?

A: 30 micrograms per cubic meter ("$\mu g/m^3$").

Q: PLEASE IDENTIFY WHAT HAS BEEN MARKED AS EDF EXHIBIT 206.

A: That exhibit is a table I generated that contains the results of my modeling runs executed using the October 25th Site Plan compared to the applicable PSD increment limit. It also contains statistical information that I gathered from the modeling results. The exhibit also contains plots I prepared showing the locations and levels of the exceedances for each modeling year.

EDF OFFERS EDF EXHIBIT 206, OCTOBER 25TH PM_{10} MODELING RESULTS.

Q: WHAT DOES THAT TABLE TELL THE TCEQ?

A: The table summarizes my modeling results for each of the 5 modeling years. The highest second high ("H2H") concentration for each modeling year is identified by both amount and location in the first three rows. For regulatory purposes, the H2H is the relevant concentration for a 24-hour PSD Increment. So for example, based on the 1984 meteorological data the model predicted a H2H 24-hour PM_{10} concentration of 45.812 $\mu g/m^3$. That concentration exceeds the PSD Increment by 50 percent. Therefore, based on that number alone, White Stallion is not entitled to a permit because the PM_{10} emission impacts from the October 25th Site Plan exceed the 24-hour PSD Increment for PM_{10}. Moreover, for each of the five modeling years, White Stallion's 24-hour PM_{10} emissions impact exceed the applicable PSD Increment by a wide margin.

Q: WHERE ARE THE EXCEEDANCES OCCURRING?

A: The majority of the exceedances are north of the property line and railcar unloading building, but there are a few exceedances to the west of the property line and barge unloading area.

Q: CAN YOU EXPLAIN THE STATISTICAL ANALYSIS INCLUDED WITHIN YOUR TABLE?

A: Yes. The 4th row on my table indicates White Stallion's individual contribution to the H2H. Since there are few sources near the proposed plant, White Stallion's individual contribution to the H2H is over 99% in each modeling year, which is indicated in the 5th row. What this means is that the other sources near the proposed plant contribute very little overall to the H2H and that White Stallion is the dominant source contributing to those exceedances. The 6th row indicates the number of individual receptor locations where the model predicted exceedances of the 30-$\mu g/m^3$ increment. For example, the model predicted that the increment would be exceeded at 32 different receptor locations in modeling year 1983. The 7th row indicates the maximum number of days (24-hour periods) that the increment is exceeded at any one receptor location. For example, the model predicted that the increment would be exceeded a maximum of 20 days at one receptor location in modeling year 1983. The 8th row indicates the total number of exceedances of the increment at all receptors in a given year. For example, the model predicted that the increment would be exceeded 194 times in modeling year 1983. Finally, the 9th row indicates the total number of exceedances of the increment at all receptors in a given year that are solely the result of White Stallion's emissions. For example, the model predicted that the increment would be exceeded 180 times in modeling year 1983 based only on emissions from White Stallion and no other surrounding sources.

Q: WHAT CONCLUSIONS DO YOU DRAW FROM YOUR PM_{10} MODELING?

A: The PM_{10} emission impacts from the October 25th Site Plan exceed the 24-hour PSD Increment and therefore, based on the modeling of this site plan, White Stallion is not entitled to a permit.

Q: DID YOU PERFORM ANY ADDITIONAL MODELING?

A: Yes I also performed atmospheric dispersion modeling specific to SO_2.

Q: WHY SPECIFICALLY SO_2?

A: Well in my review of the modeling performed by White Stallion in support of its air permit application I noticed that White Stallion's own modeling, submitted with its application, predicted concentrations of SO_2 very close to the 3-hour PSD Increment limit. Since there was at least one source of SO_2 emissions that moved I thought re-modeling was prudent.

Q: ANY OTHER REASONS YOU FOCUSED ON SO_2?

A: Yes. Prior to TCEQ's issuance of the Final Order for White Stallion on October 19, 2010, a new 1-hour NAAQS for SO_2 became effective. Specifically, the new 1-hour

NAAQS became effective on August 23, 2010. Based on historical EPA practice, the owner or operator of any major stationary source obtaining a final PSD permit on or after the effective date of the new NAAQS is required, as a prerequisite for issuance of a PSD permit, to demonstrate that the emissions increases will not "cause or contribute" to a violation of that new NAAQS.

Q: HAS WHITE STALLION DEMONSTRATED COMPLIANCE WITH THE NEW 1-HOUR NAAQS?

A: No, even though the Final Order in this case was issued after the effective date of the new NAAQS.

Q: WHAT IS THE NEW 1-HOUR NAAQS FOR SO_2?

A: 75 parts per billion or approximately 196 $\mu g/m^3$.

Q: HAVE YOU PERFORMED ANY DISPERSION MODELING WITH RESPECT TO THE 1-HOUR SO_2 NAAQS?

A: Yes.

Q: CAN YOU DESCRIBE YOUR MODELING?

A: As I stated before, I performed atmospheric dispersion modeling to determine whether White Stallion's emissions would result in an exceedance of the 1-hour NAAQS for SO_2. I used the same meteorological and emission rate input data as White Stallion, including the updated emission rate and stack parameters identified by White Stallion's witness during the 2010 contested case hearing on White Stallion's air permit application. I only adjusted the location of one SO_2 emission source that moved as a result of the new the October 25th Site Plan and made similar changes to the building locations as in the PM_{10} modeling.

Q: WHAT WERE THE RESULTS OF YOUR MODELING?

A: Using the October 25th Site Plan, the model predicts exceedances of the 1-hour NAAQS for SO_2 from White Stallion sources alone.

Q: WHAT DO YOU MEAN FROM WHITE STALLION SOURCES ALONE?

A: In order to simplify the modeling analysis, I only compiled data related to the impacts associated with SO_2 emissions from White Stallion's sources. I did not consider the impacts from other surrounding sources in my modeling analysis. This is conservative because including emissions from the other surrounding sources would only increase the modeled impacts. By not considering these sources in the modeling analysis, the impacts are under-predicted.

Q: DID YOU CONDUCT OTHER SO_2 MODELING?

A: Yes, I also modeled the impacts associated with White Stallion's old site plan, the Air Permit Site Plan.

Q: PLEASE IDENTIFY WHAT HAS BEEN MARKED AS EDF EXHIBIT 207.

A: That exhibit is a table I generated that contains the results of my modeling runs executed using the October 25th Site Plan and the Air Permit Site Plan compared to the new 1-hour NAAQS for SO_2. The exhibit also contains plots I prepared showing the locations and levels of the exceedances on the October 25th Site Plan and the Air Permit Site Plan.

EDF OFFERS EDF EXHIBIT 207, MODELING RESULTS FOR SO_2.

Q: WHAT DOES THAT TABLE TELL THE TCEQ?

A: This table contains a summary of the results from my SO_2 modeling. The highest fourth high ("H4H") concentration for SO_2 is in the first row. For regulatory purposes, the H4H is the relevant concentration for a 1-hour SO_2 NAAQS analysis. The model predicted a H4H of 240 $\mu g/m^3$ for SO_2 based on the October 25th Site Plan and 240 $\mu g/m^3$ based on the Air Permit Site Plan, both of which exceed the 1-hour NAAQS by nearly 25%. Overall the model predicted that the 1-hour SO_2 NAAQS would be exceeded at over 400 different receptor locations based on the October 25th Site Plan.

Q: WOULD YOU EXPECT MORE EXCEEDANCES OF THE 1-HOUR SO_2 NAAQS IF OTHER SOURCES BESIDES WHITE STALLION WERE INCLUDED IN THE MODELING?

A: Yes. White Stallion is located in close proximity to another large source of SO_2 emissions and including emissions from that source in the model would likely result in additional exceedances.

Q: WHAT CONCLUSIONS DO YOU DRAW FROM YOUR SO_2 MODELING?

A: The SO_2 emission impacts, regardless of whether the proposed plant is constructed according to the October 25th Site Plan or the Air Permit Site Plan, exceed the 1-hour NAAQS and therefore, based on this modeling, White Stallion is not entitled to a permit.

Q: BASED ON THE MODELING YOU HAVE PERFORMED DO YOU HAVE AN OPINION AS TO WHETHER WHITE STALLION HAS MET ITS BURDEN OF PROOF UNDER 40 CFR § 52.21(k)?

A: Yes.

Q: WHAT IS YOUR OPINION?

A: My modeling, which is based on the October 25th Site Plan, demonstrates that emissions from White Stallion will cause or contribute to air pollution in violation of the short-term PSD Increment for PM_{10} and the 1-hour NAAQS for SO_2. Even without the changes to the site plan, as reflected on the October 25th Site Plan, my modeling demonstrates that emissions from White Stallion will cause or contribute to air pollution in violation of the 1-hour NAAQS for SO_2. Based on this modeling, White Stallion has not met its burden of proof and is not entitled to a permit.

Q: DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?

A: Yes, it does.

AFFIDAVIT

BEFORE ME, the undersigned notary public, personally appeared Roberto Gasparini, to me known, who being first duly sworn, deposed and said:

"My name is Roberto Gasparini. I am over twenty-one years of age and fully competent to make this affidavit. I have personal knowledge of all facts recited herein and state that such facts are true and correct. The opinions expressed herein are, based on my professional judgment, true and correct."

Roberto Gasparini, Ph.D

Subscribed and sworn before me this 21st day of March, 2012.

JESSICA MARIE TERRAZAS
Notary Public, State of Texas
My Commission Expires
January 29, 2016

(seal)

Notary Public in and for Texas

My Commission Expires January 29, 2016

Exhibit 200

ROBERTO GASPARINI, PH.D.

EDUCATION

- Ph.D. (Atmospheric Sciences), Texas A&M University, 2005
- M.S. (Atmospheric Sciences), Texas A&M University, 2002
- B.S. (Meteorology), Texas A&M University, 1999

AREAS OF EXPERTISE

- Air Permitting
  - NSR/NNSR/PSD/Flex Air Permitting, Permit Amendments, Renewals, Standard Permits
  - Permits By Rule/PI-7 Certification/Registration/Record Keeping.
  - Title V Operating Permits/Modifications/Renewals; Annual Compliance Certifications and Deviation Reporting
  - Air Dispersion Modeling: Federal NAAQS and State Health Effects
- Air Compliance Auditing
  - MACT, NSPS, NESHAP Applicability Analysis
  - Federal and State Regulatory Compliance Review
- Air Emissions Inventory (AEI)

EXPERIENCE IN INDUSTRY SECTORS

- Chemical and Petrochemical
- For-Hire Storage Terminals
- Oil and Gas Exploration and Processing
- Food/Agricultural Facilities
- Electricity Generation
- Marine Vessel Cleaning and Repair
- Surface Coating Facilities
- Rock Crushing/Aggregate Handling
- Resin Operations

REPRESENTATIVE EXPERIENCE

Roberto has guided permitting projects at multiple levels for facilities, including Permits By Rule, Air Quality Standard Permits, New Source Review, Nonattainment New Source Review, and Federal Title V. Roberto has experience permitting in ten states. Additionally, Roberto conducts and directs computerized air dispersion modeling initiatives in support of clients and their desired projects. Roberto has developed methods for streamlining these evaluations in order to make necessary demonstrations easily and successfully. In addition to permitting, Roberto also has experience in providing additional support such as regulatory applicability assessments (State, NSPS, NESHAP, MACT), calculations/spreadsheet development for air emissions recordkeeping, continuing compliance, required periodic reports, and emission inventories.

Exhibit 201

- Prepared NSR air permit/amendment/Title V operating permit applications for various chemical, agricultural, aggregate handling, and manufacturing facilities in Texas, California, Colorado, Florida, Hawaii, Indiana, Kansas, Louisiana, Pennsylvania, and Utah.
- Responsible for all air permitting matters for a Barge Cleaning and Repair Facility, including: managing and updating state (NSR) and federal (Clean Air Act Title V) permits, conducting air emissions recordkeeping (including annual air emissions inventory), fulfilling state and federal reporting obligations (including semiannual 40 CFR 63 Maximum Achievable Control Technology, or MACT, reports), ensuring compliance with applicable environmental regulations (including onsite inspections and training), support during regulatory investigations, and Notice of Violation/Enforcement-related matters.
- Conducted air dispersion modeling for Tank-For-Hire Chemical/Petroleum Storage Terminals to evaluate permissibility of projects, developed computer programs to process model output for numerous facilities to make necessary demonstrations to TCEQ without having to conduct countless modeling runs, and addressed site-specific nuances such as Single Property Line Designations.
- Was deposed and testified as an expert witness for air dispersion modeling before the Texas State Office of Administrative Hearings regarding the air dispersion modeling conducted for a Prevention of Significant Deterioration permit that would authorize a major petroleum coke-fired power plant.
- Satisfied deficiencies identified during audits conducted under the State of Texas Environmental, Health, and Safety Audit Privilege Act while working with several facilities' legal counsel.
- Compiled and submitted an air permit amendment application that was central to an indemnity claim against the facility's previous owner while working with that facility's staff as well as their legal counsel.
- Conducted special projects for Tank-For-Hire Chemical/Petroleum Storage Terminals including Pollution Control Property Tax Relief applications, air emissions sampling, and spreadsheet development for compliance and marketing evaluations.
- Developed multiple EPA Risk Management Plans, including conducting 5-year updates, 5-year hazard reviews, 3-year compliance audits, and additional updates as necessary based on changes in chemical inventory.
- Evaluated and prepared a variety of Permit By Rules, including PI-7 Registrations/Certifications as well as Texas 30 TAC 106.8 record keeping summaries for various chemical, agricultural, aggregate handling, and manufacturing facilities.
- Prepared Air Emissions Inventory submissions for a university physical plant, a carbon black manufacturer, a cement plant, electricity generators, and chemical facilities in Texas. Preparation included automation of calculation spreadsheets to generate real examples for supporting documentation.

Exhibit 201

- Prepared and assisted in the preparation of Maximum Achievable Control Technology (MACT) as well as Site Operating Permit (SOP) semi-annual compliance and deviation reporting for several chemical facilities, including the development of a comprehensive compliance evaluation checklist to identify compliance with permits as well as state and federal regulations.
- Conducted groundwater modeling to evaluate the potential for measured concentrations of contaminants at the surface to attenuate to the groundwater below that was included in Affected Property Assessment Reports (APARs).

PROFESSIONAL HISTORY

- Spirit Environmental, LLC, Project Director, Houston, TX (January 2012–Present)
- Source Environmental Sciences, Inc., Managing Environmental Consultant and Partner, Houston, TX (June 2005–January 2012)

AFFILIATIONS

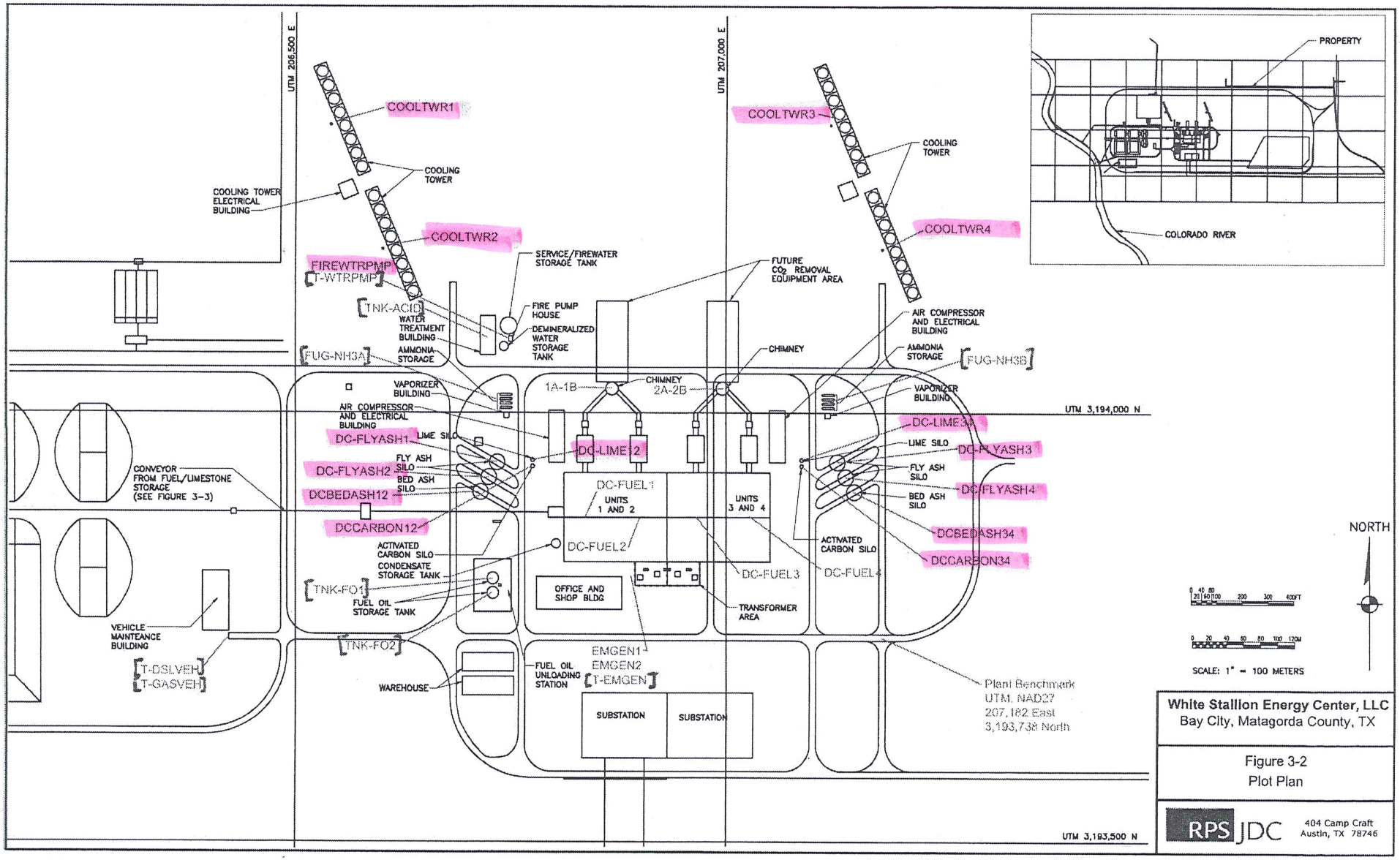
- Air & Waste Management Association – Gulf Coast Chapter
  - Membership Committee Chair, 2010-present
  - Past Secretary, 2009
- Member, Air & Waste Management Association (2009–Present)

PUBLICATIONS AND SELECTED PRESENTATIONS

- Primary Author
  1. **Gasparini, R.**, D. R. Collins, E. Andrews, P. J. Sheridan, J. A. Ogren, and J. G. Hudson (2006), Coupling aerosol size distributions and size-resolved hygroscopicity to predict humidity-dependent optical properties and cloud condensation nuclei spectra, *Journal of Geophysical Research – Atmospheres*, *111*, D05S13, doi:10.1029/2005JD006092.
  2. **Gasparini, R.**, R. Li, D. R. Collins, R. A. Ferrare, and V. G. Brackett (2006), Application of aerosol hygroscopicity measured at the Atmospheric Radiation Measurement Program's Southern Great Plains site to examine composition and evolution, *Journal of Geophysical Research – Atmospheres*, *111*, D05S12, doi:10.1029/2004JD005448.
  3. **Gasparini, R.**, R. Li, and D. R. Collins (2004), Integration of size distributions and size-resolved hygroscopicity measured during the Houston Supersite for compositional categorization of the aerosol, *Atmospheric Environment*, *38*(20), 3285-3303.
- Co-Author
  1. Wang, J., D. R. Collins, D. Covert, R. Elleman, R. A. Ferrare, **R. Gasparini**, H. H. Jonsson, J. A. Ogren, P. J. Sheridan, and S.-C. Tsay (2006), Temporal variation of aerosol properties at a rural continental site and study of aerosol evolution through growth law analysis, *Journal of Geophysical Research – Atmospheres*, *111*, D18203, doi:10.1029/2005JD006704.

Exhibit 201

2. Andrews, E., P. J. Sheridan, M. Fiebig, A. McComiskey, J. A. Ogren, P. Arnott, D. Covert, R. Elleman, **R. Gasparini**, D. R. Collins, H. Jonsson, B. Schmid, and J. Wang (2006), Comparison of methods for deriving aerosol asymmetry parameter, *Journal of Geophysical Research – Atmospheres*, *111*, D05S04, doi:10.1029/2004JD005734.
3. **Rissman**, T. A., T. M. VanReken, J. Wang, **R. Gasparini**, D. R. Collins, H. H. Jonsson, F. J. Brechtel, R. C. Flagan, and J. H. Seinfeld (2006), Characterization of ambient aerosol from measurements of cloud condensation nuclei (CCN) during the 2003 Atmospheric Radiation Measurement (ARM) Aerosol Intensive Observational Period (IOP) at the Southern Great Plains (SGP) site in Oklahoma, *Journal of Geophysical Research – Atmospheres*, *111*, D05S11, doi:10.1029/2004JD005695.
4. Santarpia, J. L., **R. Gasparini**, R. Li, and D. R. Collins (2004), Diurnal variations in the hygroscopic growth cycles of ambient aerosol populations, *Journal of Geophysical Research – Atmospheres*, *110*, D03206, doi:10.1029/2004JD005279.
5. Lawrence, J. R., S. D. Gedzelman, D. Dexheimer, H.-K. Cho, G. Carrie, **R. Gasparini**, C. Anderson, K. P. Bowman, and M. I. Biggerstaff (2004), Stable isotopic composition of water vapor in the tropics, *Journal of Geophysical Research – Atmospheres*, *109*, D06115, doi:10.1029/2003JD004046.



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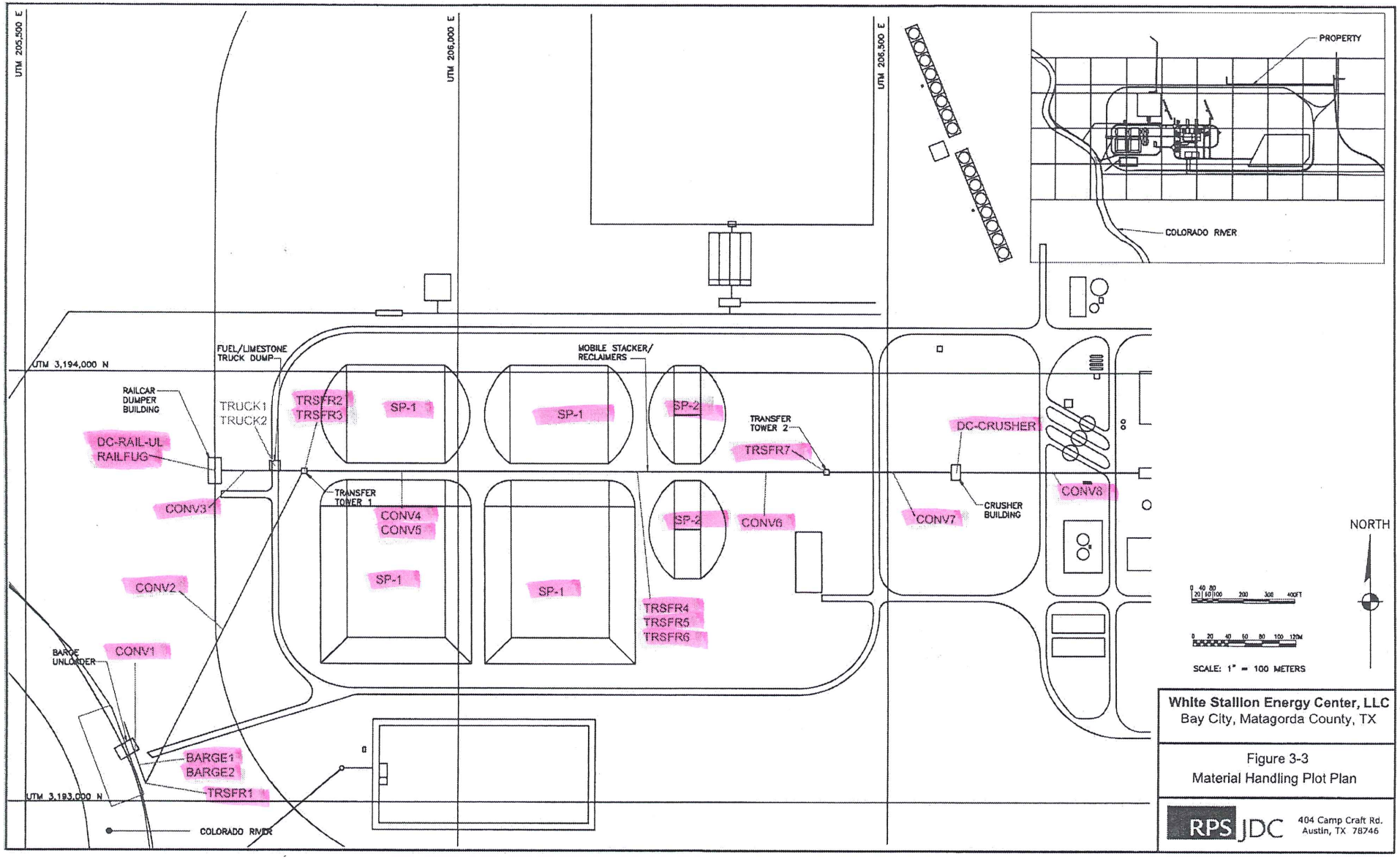

UTM 205,500 E
UTM 206,000 E
UTM 206,500 E
UTM 3,194,000 N
UTM 3,193,000 N
PROPERTY
COLORADO RIVER
FUEL/LIMESTONE TRUCK DUMP
MOBILE STACKER/ RECLAIMERS
RAILCAR DUMPER BUILDING
TRUCK1
TRUCK2
TRSFR2
TRSFR3
SP-1
SP-1
SP-2
TRANSFER TOWER 2
DC-CRUSHER
DC-RAIL-UL
RAILFUG
TRSFR7
CONV3
TRANSFER TOWER 1
CONV4
CONV5
SP-2
CONV6
CONV7
CRUSHER BUILDING
CONV8
SP-1
SP-1
TRSFR4
TRSFR5
TRSFR6
CONV2
BARGE UNLOADER
CONV1
BARGE1
BARGE2
TRSFR1
COLORADO RIVER
NORTH
SCALE: 1" = 100 METERS
White Stallion Energy Center, LLC
Bay City, Matagorda County, TX
Figure 3-3
Material Handling Plot Plan
RPS JDC
404 Camp Craft Rd.
Austin, TX 78746

Exhibit 202

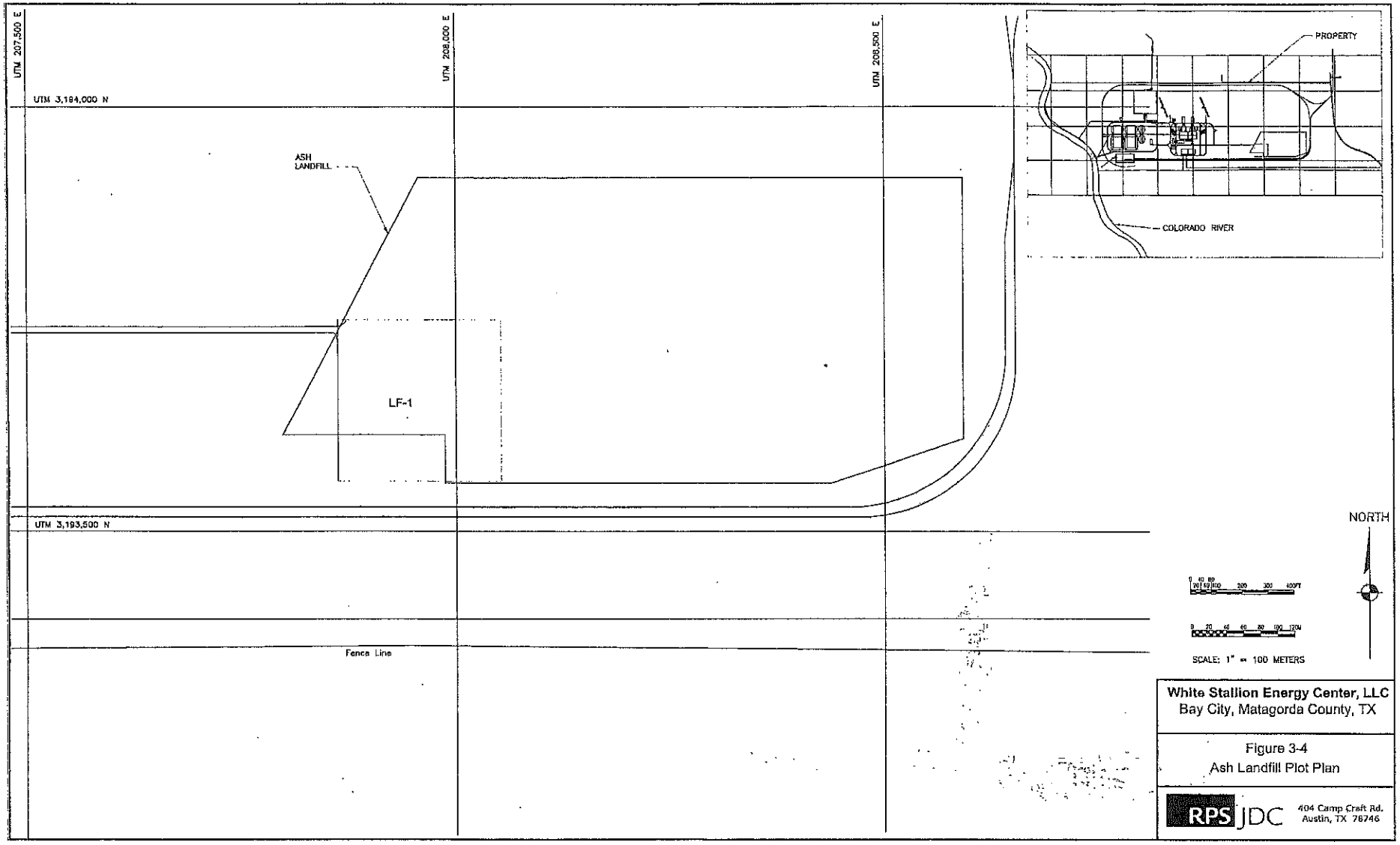
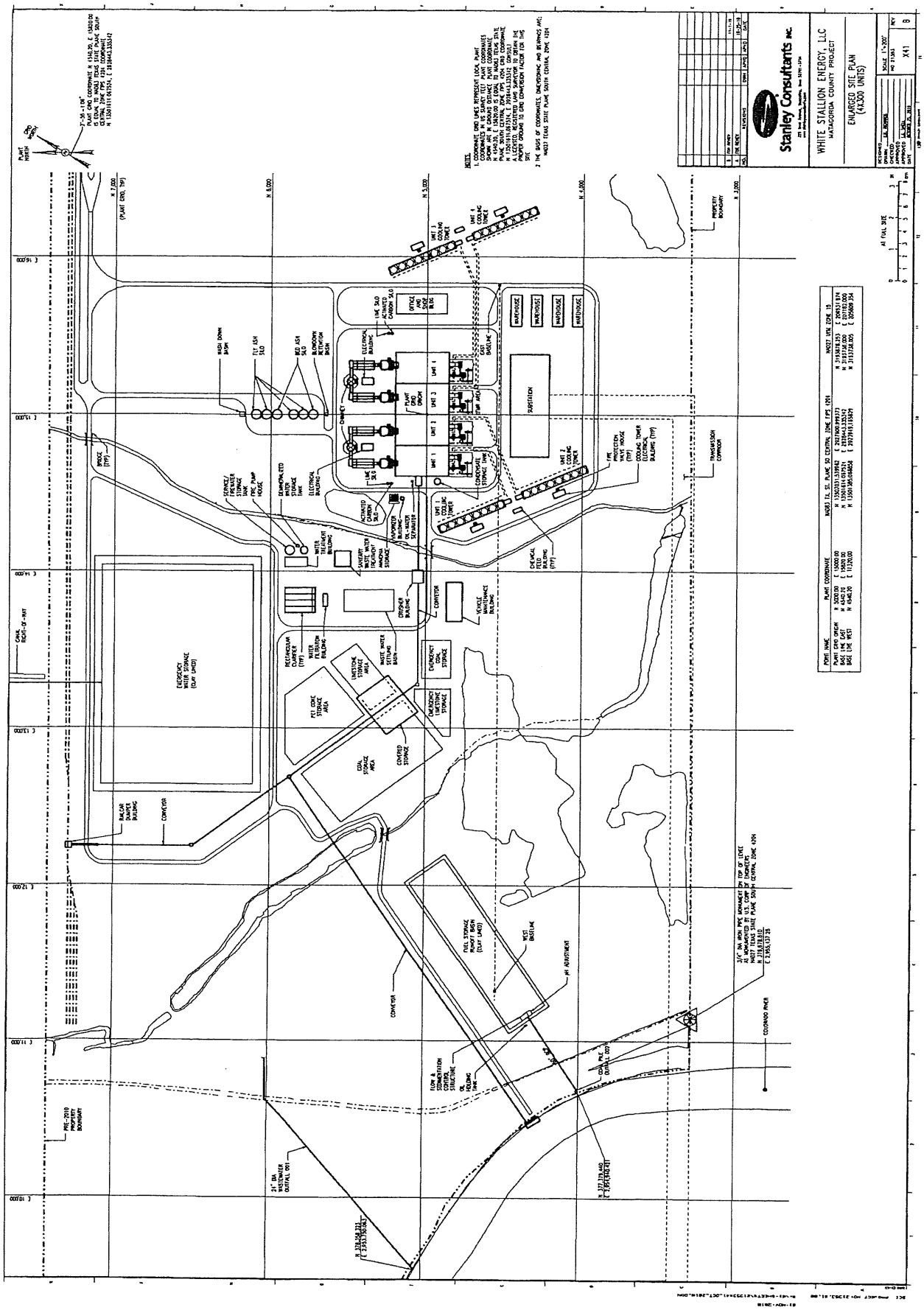

UTM 207,500 E
UTM 208,000 E
UTM 208,500 E
UTM 3,194,000 N
UTM 3,193,500 N
ASH LANDFILL
LF-1
Fence Line
PROPERTY
COLORADO RIVER
NORTH
SCALE: 1" = 100 METERS
White Stallion Energy Center, LLC
Bay City, Matagorda County, TX
Figure 3-4
Ash Landfill Plot Plan
RPS JDC
404 Camp Craft Rd.
Austin, TX 76746

Exhibit 202


Stanley Consultants INC.
WHITE STALLION ENERGY, LLC
MATAGORDA COUNTY PROJECT
ENLARGED SITE PLAN
(X300 UNITS)
SCALE 1"=200'
X41
B
NOTES
1. COORDINATE GRID LINES REPRESENT LOCAL PLANT COORDINATES N AS SURVEY FEET. PLANT COORDINATES N 10,000.00, E 10,000.00 EQUAL TO MASS TEXAS STATE PLANE SOUTH CENTRAL ZONE NAD 27 FIPS 4204 COORDINATES N 13,543.20, E 13,429.00 IS EQUAL TO MASS TEXAS STATE PLANE SOUTH CENTRAL ZONE NAD 27 FIPS 4204 COORDINATES N 13,543.20, E 13,429.00 (EPSG 32204). A LICENSED REGISTERED LAND SURVEYOR TO OBTAIN THE APPROPRIATE GROUND TO GRID CONVERSION FACTOR FOR THIS SITE.
2. THE BASIS OF COORDINATES, DATUM/ZONE, AND BEARINGS ARE: NAD27 TEXAS STATE PLANE SOUTH CENTRAL ZONE 4204
PLANT NORTH
TRUE NORTH
7°-36'-11.06"
PLANT GRID COORDINATES N 13,543.20, E 13,429.00 EQUAL TO NAD27 TEXAS STATE PLANE SOUTH CENTRAL ZONE FIPS 4204 COORDINATE
N 13,543.20 (N 3,313,543.20), E 13,429.00 (E 2,813,429.00)
N 7,000
(PLANT GRID, TYP)
N 6,000
N 5,000
N 4,000
N 3,000
N 2,000
E 16,000
E 15,000
E 14,000
E 13,000
E 12,000
E 11,000
E 10,000
PROPERTY BOUNDARY
UNIT 1 COOLING TOWER
UNIT 4 COOLING TOWER
OFFICE AND SHOP BLDG
WAREHOUSE
WAREHOUSE
WAREHOUSE
WAREHOUSE
EAST BASELINE
SUBSTATION
BASIN DOWN BASIN
FLY ASH SILO
BED ASH SILO
BLOWDOWN RETENTION BASIN
ELECTRICAL BUILDING
LIME SILO
ACTIVATED CARBON SILO
CHIMNEY
PLANT GRID ORIGIN
UNIT 1
UNIT 2
UNIT 3
UNIT 4
CONDENSATE STORAGE TANK
UNIT 1 COOLING TOWER
UNIT 4 COOLING TOWER
FIRE PROTECTION WATER STORAGE (TYP)
COOLING TOWER ELECTRICAL BUILDING (TYP)
TRANSMISSION CORRIDOR
PRESSE (TYP)
SERVICE WATER STORAGE TANK
FIRE PUMP HOUSE
DEMINERALIZED WATER STORAGE TANK
ELECTRICAL BUILDING
ACTIVATED CARBON SILO
AMMONIA STORAGE
EVAPORATOR BUILDING
OIL WATER SEPARATOR
WATER TREATMENT BUILDING
SANITARY WASTE WATER TREATMENT FACILITY
DRYSHER BUILDING
CONVEYOR
VEHICLE MAINTENANCE BUILDING
CRITICAL FEED BUILDING (TYP)
EMERGENCY WATER STORAGE (TANK UNITS)
RECIRCULATION CLARIFIER (TYP)
WATER FILTRATION BUILDING
LIMESTONE STORAGE AREA
WASTE WATER SETTLING BASIN
EMERGENCY CHEMICAL STORAGE
EMERGENCY LUBRICANT STORAGE
FUEL CORE STORAGE AREA
COAL STORAGE AREA
COVERED STORAGE
BULKER UNLOADER BUILDING
CONVEYOR
FUEL STORAGE RUNOFF BASIN (TANK UNITS)
WEST BASELINE
PH ADJUSTMENT
CONVEYOR
FLOW & SEDIMENTATION CONTROL STRUCTURE
OIL SEPARATOR TANK
COAL PILE RUNOFF
COLORADO RIVER
PRE-2010 PROPERTY BOUNDARY
36" DIA WASTEWATER OUTFALL 001
N 373,543.21
E 2,813,543.21
N 373,373.440
E 2,813,543.21
CASE RIGHT-OF-WAY
PLANT COORDINATE
MASS TX. ST. PLANE SO CENTRAL ZONE FIPS 4204
MASS27 NAD ZONE 15
POINT NAME
PLANT GRID ORIGIN
BASE LINE EAST
BASE LINE WEST
N 10000.00
E 10000.00
N 4420.70
E 10000.00
N 4440.70
E 11,129.00
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N 13503014.019524
E 2929443.335242
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N 3193478.253
E 3095317.874
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E 3097183.000
N 3193134.000
E 3095800.334
N 3193134.000
E 3095800.334
AT FUEL SITE
0 1 2 3 4 5 6 7 8 m
0 1 2 3 4 5 6 7 8 9 10 m

Exhibit 203

Entry Number	EPN Name (AERMOD Source ID)	EPN Name (Modeling Report Table 5-1)	UTM mE - AERMOD Input	UTM mN - AERMOD Input	UTM mE - Using 404 Plot Plan	UTM mN - Using 404 Plot Plan	Distance Moved (meters)	Direction Moved (degrees*)	EPNs Moved (running total)
1	1A1B	Units 1 and 2 CFB Boiler	206,868.0	3,194,028.0	206,868.0	3,194,028.0	0		0
2	2A2B	Units 3 and 4 CFB Boiler	206,996.0	3,194,028.0	206,996.0	3,194,028.0	0		
3	DCFUEL1	Unit 1 Fuel/Limestone Dust Collector	206,837.0	3,193,884.0	206,837.0	3,193,884.0	0		
4	DCFUEL2	Unit 2 Fuel/Limestone Dust Collector	206,899.0	3,193,884.0	206,899.0	3,193,884.0	0		
5	DCFUEL3	Unit 3 Fuel/Limestone Dust Collector	206,965.0	3,193,884.0	206,965.0	3,193,884.0	0		
6	DCFUEL4	Unit 4 Fuel/Limestone Dust Collector	207,027.0	3,193,884.0	207,027.0	3,193,884.0	0		
7	FLYASH1	Unit 1 Fly Ash Dust Collector	206,734.0	3,193,942.0	206,930.0	3,194,210.0	332	54	1
8	FLYASH2	Unit 2 Fly Ash Dust Collector	206,724.0	3,193,925.0	206,930.0	3,194,190.0	336	52	2
9	FLYASH3	Unit 3 Fly Ash Dust Collector	207,130.0	3,193,942.0	206,930.0	3,194,138.0	280	136	3
10	FLYASH4	Unit 4 Fly Ash Dust Collector	207,140.0	3,193,925.0	206,930.0	3,194,118.0	285	137	4
11	BEDASH12	Unit 1 & 2 Bed Ash Dust Collector	206,714.0	3,193,907.0	206,930.0	3,194,170.0	340	51	5
12	BEDASH34	Unit 3 & 4 Bed Ash Dust Collector	207,150.0	3,193,907.0	206,930.0	3,194,098.0	291	139	6
13	LIME12	Unit 1 & 2 Lime Silo Dust Collector	206,776.0	3,193,944.0	206,795.0	3,193,952.0	21	23	7
14	LIME34	Unit 3 & 4 Lime Silo Dust Collector	207,088.0	3,193,944.0	207,090.0	3,193,950.0	6	72	8
15	CARBON12	Unit 1 & 2 Carbon Silo Dust Collector	206,776.0	3,193,937.0	206,795.0	3,193,944.0	20	20	9
16	CARBON34	Unit 3 & 4 Carbon Silo Dust Collector	207,088.0	3,193,937.0	207,090.0	3,193,943.0	6	72	10
17	EMGEN1	Diesel-Fired Emergency Generator 1	206,892.0	3,193,808.0	?	?			
18	EMGEN2	Diesel-Fired Emergency Generator 2	206,892.0	3,193,808.0	?	?			
19	FWPMP	Main Diesel-Fired Fire Water Pump	206,746.0	3,194,087.0	206,672.0	3,194,130.0	86	150	11
20	DCRAILUL	Railcar Unloading Building	205,719.0	3,193,884.0	206,080.0	3,194,585.0	788	63	12
21	DC_CRUSH	Crusher Building	206,580.0	3,193,884.0	206,613.0	3,193,892.0	34	14	13
22	FA1LOAD	Fly Ash #1 Truck Loading Fugitives	206,734.0	3,193,942.0	206,930.0	3,194,210.0	332	54	14
23	FA2LOAD	Fly Ash #2 Truck Loading Fugitives	206,724.0	3,193,925.0	206,930.0	3,194,190.0	336	52	15
24	FA3LOAD	Fly Ash #3 Truck Loading Fugitives	207,130.0	3,193,942.0	206,930.0	3,194,138.0	280	136	16
25	FA4LOAD	Fly Ash #4 Truck Loading Fugitives	207,140.0	3,193,925.0	206,930.0	3,194,118.0	285	137	17
26	BA12LOAD	Bed Ash #1 Truck Loading Fugitives	206,714.0	3,193,907.0	206,930.0	3,194,170.0	340	51	18
27	BA34LOAD	Bed Ash #2 Truck Loading Fugitives	207,150.0	3,193,907.0	206,930.0	3,194,098.0	291	139	19
28	BARGE1a	Barge Unloading to Hopper	205,610.0	3,193,591.0	205,540.0	3,193,663.0	100	134	20
29	BARGE1b	Barge Unloading to Hopper	205,610.0	3,193,591.0	205,540.0	3,193,663.0	100	134	21
30	BARGE2a	Barge Hopper to CO-1	205,629.0	3,193,542.0	205,540.0	3,193,663.0	150	126	22
31	BARGE2b	Barge Hopper to CO-1	205,629.0	3,193,542.0	205,540.0	3,193,663.0	150	126	23
32	CONV1	Conveyor #1	205,621.0	3,193,565.0	205,540.0	3,193,663.0	127	130	24
33	TRSFR1	CO-1 to CO-2	205,638.0	3,193,520.0	205,540.0	3,193,663.0	173	124	25
34	CONV2	Conveyor #2	205,729.0	3,193,699.0	205,877.0	3,193,913.0	260	55	26
35	RAILFUG	Rail Unloading Fugitives	205,719.0	3,193,884.0	206,080.0	3,194,585.0	788	63	27
36	TRUCK1	Truck Unloading to Hopper	205,788.0	3,193,890.0	?	?			
37	TRUCK2	Truck Hopper to CO-3	205,788.0	3,193,890.0	?	?			
38	CONV3	Conveyor #3	205,773.0	3,193,884.0	206,082.0	3,194,342.0	552	56	28
39	TRSFR2	CO-3 to CO-4 or CO-5	205,821.0	3,193,884.0	206,216.0	3,194,147.0	475	34	29
40	TRSFR3	CO-2 to CO-4 or CO-5	205,821.0	3,193,884.0	206,216.0	3,194,147.0	475	34	30
41	CONV4	Conveyor #4	205,926.0	3,193,884.0	206,285.0	3,194,055.0	398	25	31
42	CONV5	Conveyor #5	205,926.0	3,193,884.0	206,285.0	3,194,055.0	398	25	32
43	TRSFR4	CO-4 to Mobile Stacker	206,200.0	3,193,884.0	206,335.0	3,193,988.0	170	38	33
44	TRSFR5	CO-5 to Mobile Stacker	206,200.0	3,193,884.0	206,335.0	3,193,988.0	170	38	34
45	TRSFR6	Mobile Reclaim to CO-6 or CO-7	206,200.0	3,193,884.0	206,335.0	3,193,988.0	170	38	35
46	CONV6	Conveyors #6 and #7	206,344.0	3,193,884.0	206,365.0	3,193,946.0	65	71	36
47	TRSFR7	CO-6 or CO-7 to CO-8 or CO-9	206,428.0	3,193,884.0	206,401.0	3,193,892.0	28	163	37
48	CONV7	Conveyors #8 and #9	206,690.0	3,193,884.0	206,509.0	3,193,894.0	181	177	38
49	CONV8	Conveyors #10 and #11	206,690.0	3,193,884.0	206,715.0	3,193,891.0	26	16	39
50	CT1A	Cooling Tower #1	206,529.9	3,194,395.8	206,708.0	3,193,842.0	582	288	40
51	CT1B	Cooling Tower #1	206,536.6	3,194,379.8	206,715.0	3,193,826.0	582	288	41
52	CT1C	Cooling Tower #1	206,543.1	3,194,364.0	206,722.0	3,193,810.0	582	288	42
53	CT1D	Cooling Tower #1	206,549.7	3,194,348.2	206,729.0	3,193,794.0	582	288	43
54	CT1E	Cooling Tower #1	206,556.2	3,194,332.4	206,736.0	3,193,778.0	583	288	44
55	CT1F	Cooling Tower #1	206,562.8	3,194,316.6	206,743.0	3,193,762.0	583	288	45
56	CT1G	Cooling Tower #1	206,569.3	3,194,300.7	206,750.0	3,193,746.0	583	288	46
57	CT1H	Cooling Tower #1	206,575.9	3,194,284.9	206,757.0	3,193,730.0	584	288	47
58	CT2A	Cooling Tower #2	206,589.9	3,194,251.2	206,776.0	3,193,676.0	605	288	48
59	CT2B	Cooling Tower #2	206,596.5	3,194,235.2	206,783.0	3,193,660.0	605	288	49
60	CT2C	Cooling Tower #2	206,603.0	3,194,219.3	206,790.0	3,193,644.0	605	288	50
61	CT2D	Cooling Tower #2	206,609.6	3,194,203.5	206,797.0	3,193,628.0	605	288	51
62	CT2E	Cooling Tower #2	206,616.2	3,194,187.7	206,804.0	3,193,612.0	606	288	52
63	CT2F	Cooling Tower #2	206,622.7	3,194,171.9	206,811.0	3,193,596.0	606	288	53
64	CT2G	Cooling Tower #2	206,629.3	3,194,156.1	206,818.0	3,193,580.0	606	288	54
65	CT2H	Cooling Tower #2	206,635.8	3,194,140.3	206,825.0	3,193,564.0	607	288	55

* - Direction in math degrees (0=E, 90=N, 180=W, 270=S)

Entry Number	EPN Name (AERMOD Source ID)	EPN Name (Modeling Report Table 5-1)	UTM mE - AERMOD Input	UTM mN - AERMOD Input	UTM mE - Using 404 Plot Plan	UTM mN - Using 404 Plot Plan	Distance Moved (meters)	Direction Moved (degrees*)	EPNs Moved (running total)
66	CT3A	Cooling Tower #3	207,111.5	3,194,395.8	207,215.0	3,193,940.0	467	283	56
67	CT3B	Cooling Tower #3	207,118.2	3,194,379.8	207,222.0	3,193,924.0	467	283	57
68	CT3C	Cooling Tower #3	207,124.7	3,194,364.0	207,229.0	3,193,908.0	468	283	58
69	CT3D	Cooling Tower #3	207,131.3	3,194,348.2	207,236.0	3,193,892.0	468	283	59
70	CT3E	Cooling Tower #3	207,137.8	3,194,332.4	207,243.0	3,193,876.0	468	283	60
71	CT3F	Cooling Tower #3	207,144.4	3,194,316.6	207,250.0	3,193,860.0	469	283	61
72	CT3G	Cooling Tower #3	207,150.9	3,194,300.7	207,257.0	3,193,844.0	469	283	62
73	CT3H	Cooling Tower #3	207,157.5	3,194,284.9	207,264.0	3,193,828.0	469	283	63
74	CT4A	Cooling Tower #4	207,171.5	3,194,251.2	207,284.0	3,193,774.0	490	283	64
75	CT4B	Cooling Tower #4	207,178.1	3,194,235.2	207,291.0	3,193,758.0	490	283	65
76	CT4C	Cooling Tower #4	207,184.7	3,194,219.3	207,298.0	3,193,742.0	491	283	66
77	CT4D	Cooling Tower #4	207,191.2	3,194,203.5	207,305.0	3,193,726.0	491	283	67
78	CT4E	Cooling Tower #4	207,197.8	3,194,187.7	207,312.0	3,193,710.0	491	283	68
79	CT4F	Cooling Tower #4	207,204.3	3,194,171.9	207,319.0	3,193,694.0	491	283	69
80	CT4G	Cooling Tower #4	207,210.9	3,194,156.1	207,326.0	3,193,678.0	492	284	70
81	CT4H	Cooling Tower #4	207,217.4	3,194,140.3	207,333.0	3,193,662.0	492	284	71
82	SP1	Petcoke/Coal Storage Pile	205,838.7	3,193,661.5	206,273.0	3,193,843.0	471	23	72
83	SP2	Limestone Storage Pile	206,224.1	3,193,756.5	206,413.0	3,193,959.0	277	47	73
84	LF1	Ash Disposal Landfill	207,862.0	3,193,559.0	?	?			

* - Direction in math degrees (0=E, 90=N, 180=W, 270=S)

Exhibit 204

May 1996

CHEER Workshop

May 16, 1996

printed on
recycled paper

New Source Review Division

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Attachment 1

Exhibit 205

1.5 lb / ton	PEDCo	uncontrolled factor for phosphate rock transfer and loading (appiy control efficiencies of 90-95%)
neg-0.2 lb\ton	PEDCo "Evaluation of Fugitive Dust from Mining" PEDCo Environmental, Cincinnati, Ohio, (prepared for EPA) April, 1976.	phosphate rock
0.04 -0.96 lb PM/ ton	"Reasonably Available Control Measures for Fugitive Dust Sources" Ohio EPA, Office of Air Pollution Control, Columbus, Ohio, Sept 1980. Reference: "Technical Guidance for Control of Industrial Process Fugitive Partic8late Emissions", PEDCo, for EPA, EPA-450/3-77-010, March 1977	Conveying and transfer of coal.
0.02 lb PM/ ton	"Reasonably Available Control Measures for Fugitive Dust Sources" Ohio EPA, Office of Air Pollution Control, Columbus, Ohio, Sept 1980. Reference: "Fugitive Emissions from integrated Iron and Steel Plants". Bohn, Cuscino & Cowher, Midwest Research Institute, Kansas City, MO for EPA, EPA 600/2-78-050. March 1978	Conveying and transfer of coal.
0.02 lb PM/ ton	"Reasonably Available Control Measures for Fugitive Dust Sources" Ohio EPA, Office of Air Pollution Control, Columbus, Ohio, Sept 1980. Reference: "Evaluation of Fugitive Dust Emissions from Mining", PEDCo for EPA, Cinncinnati, OH	Conveying and transfer of coal.
0.8 lb PM/ ton	"Reasonably Available Control Measures for Fugitive Dust Sources" Ohio EPA, Office of Air Pollution Control, Columbus, Ohio, Sept 1980.	Transfer (spillage) of coal
$EF=\frac{(0.0018)(\frac{S}{5})(\frac{u}{5})(\frac{H}{10})}{(\frac{M}{2})^2} lbTSP/ton$	"Technical Guidance Document for Estimating Fugitive Dust Impacts from Coal Handling Operations - Volume 2" Howroyd (Dames & Moore) for US Dept of Energy Office of Scientific and Techncial Information, DOE/RG/10312-1 , Sept 1984. Reference: Bohn of MRI, 1978.	Conveyor transfer (enclosed); Transfer station enclosures are projected to have an effective control of 90%. For an open conveyor transfer, increase emissions by a factor of 10. S = silt content (%); w = wind speed (mph) H = drop height (ft); M = moisture content (%)
$E=k(0.0032)\frac{(U/5)^{1.3}}{(M/2)^{1.4}}(lb/ton)$	AP-42, Ch 13, 13.2.4-3	For batch or continous drop points;k=particle size multiplier; U=wind speed in mph; M=moisture content (%); Equation degrades if silt and moisture content of coal is outside the parameters that were used to derive the equation.

$$E=k(0.0032)\frac{(U/5)^{1.3}}{(M/2)^{1.4}}(lb/ton)$$

for BEST ESTIMATE of Transfer Operations.

$$E=k(0.0032)\frac{(U/5)^{1.3}}{(M/2)^{1.4}}(lb/ton)$$

for BEST ESTIMATE of Conveying Operations
(Use this equation for each 100 yards of conveyor length.)

Exhibit 205

PM_{10} 24-Hour Evaluation - October 25th Site Plan	1983	1984	1986	1987	1988	24-Hour PSD Increment
Highest 2nd High Concentration ("H2H", µg/m^3)	41.334	45.812	39.889	44.984	38.444	30
UTM Coordinates of H2H Receptor (mE)	205,975	206,000	205,975	205,975	205,975	
UTM Coordinates of H2H Receptor (mN)	3,194,675	3,194,650	3,194,650	3,194,675	3,194,675	
WSEC Contribution to H2H (µg/m^3)	41.118	45.389	39.587	44.721	38.222	
WSEC Contribution (% of ALL)	99.48%	99.08%	99.24%	99.41%	99.42%	
# of Receptors w/2nd High > 30 and WSEC Contribution > 5	32	25	27	27	24	
Max Frequency w/ALL > 30 and WSEC > 5 at 1 Receptor	20	25	11	12	12	
# of Exceedances w/ALL > 30 and WSEC > 5, All Receptors	194	214	105	122	104	
# of Exceedances w/ only WSEC > 30, All Receptors	180	204	97	117	97	

1983

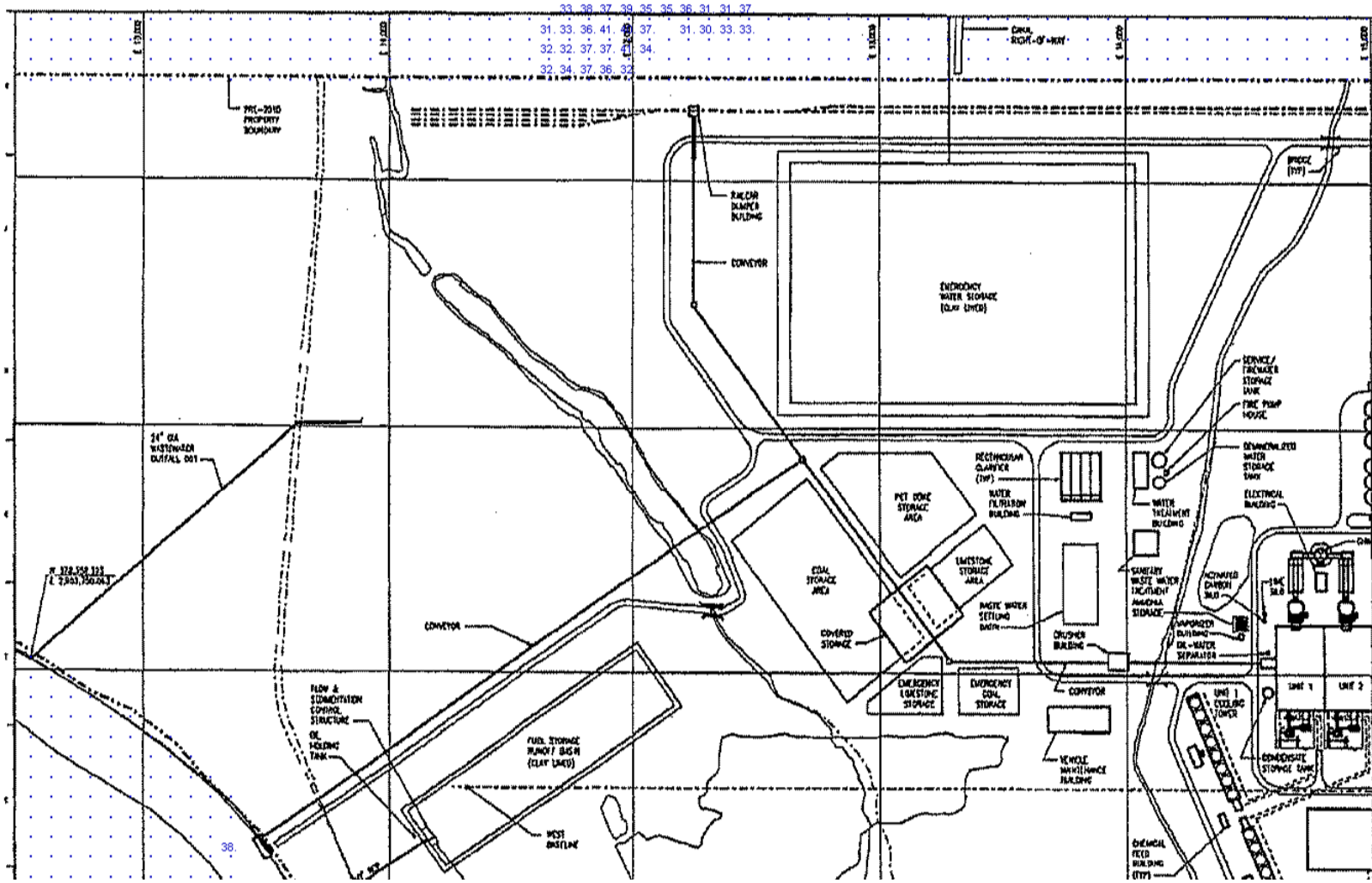


Exhibit 206

1984

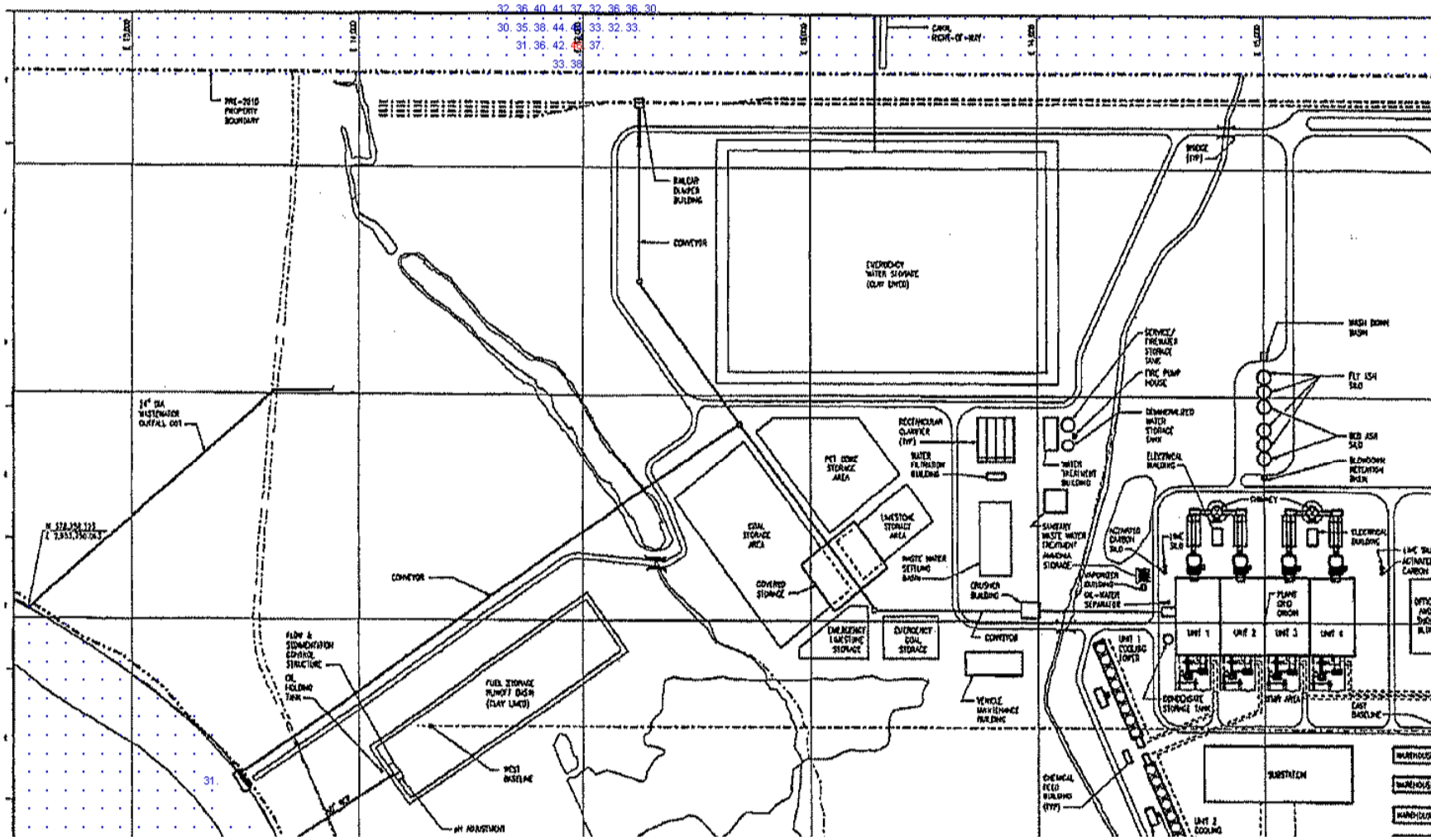


Exhibit 206

1986

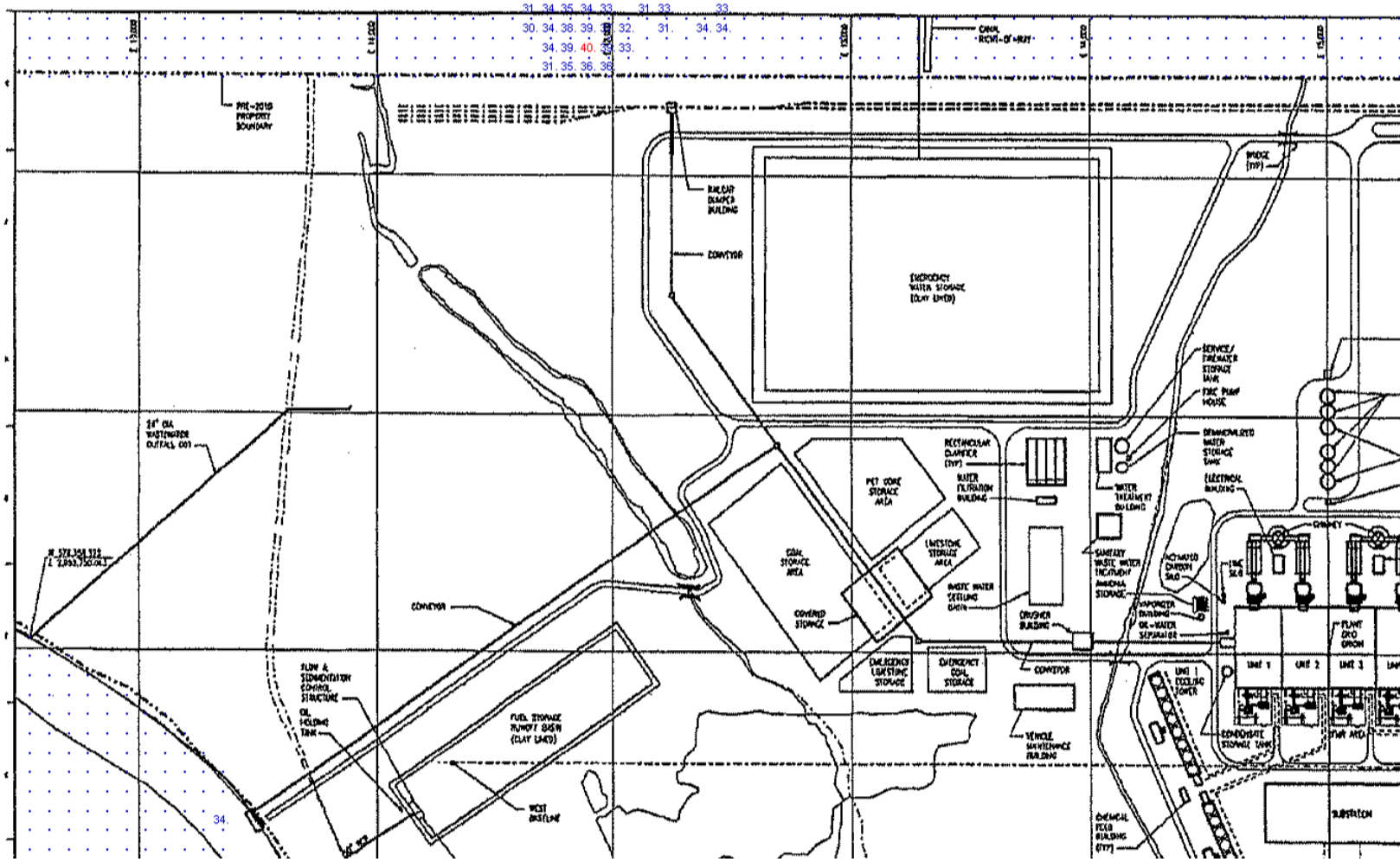


Exhibit 206

1987

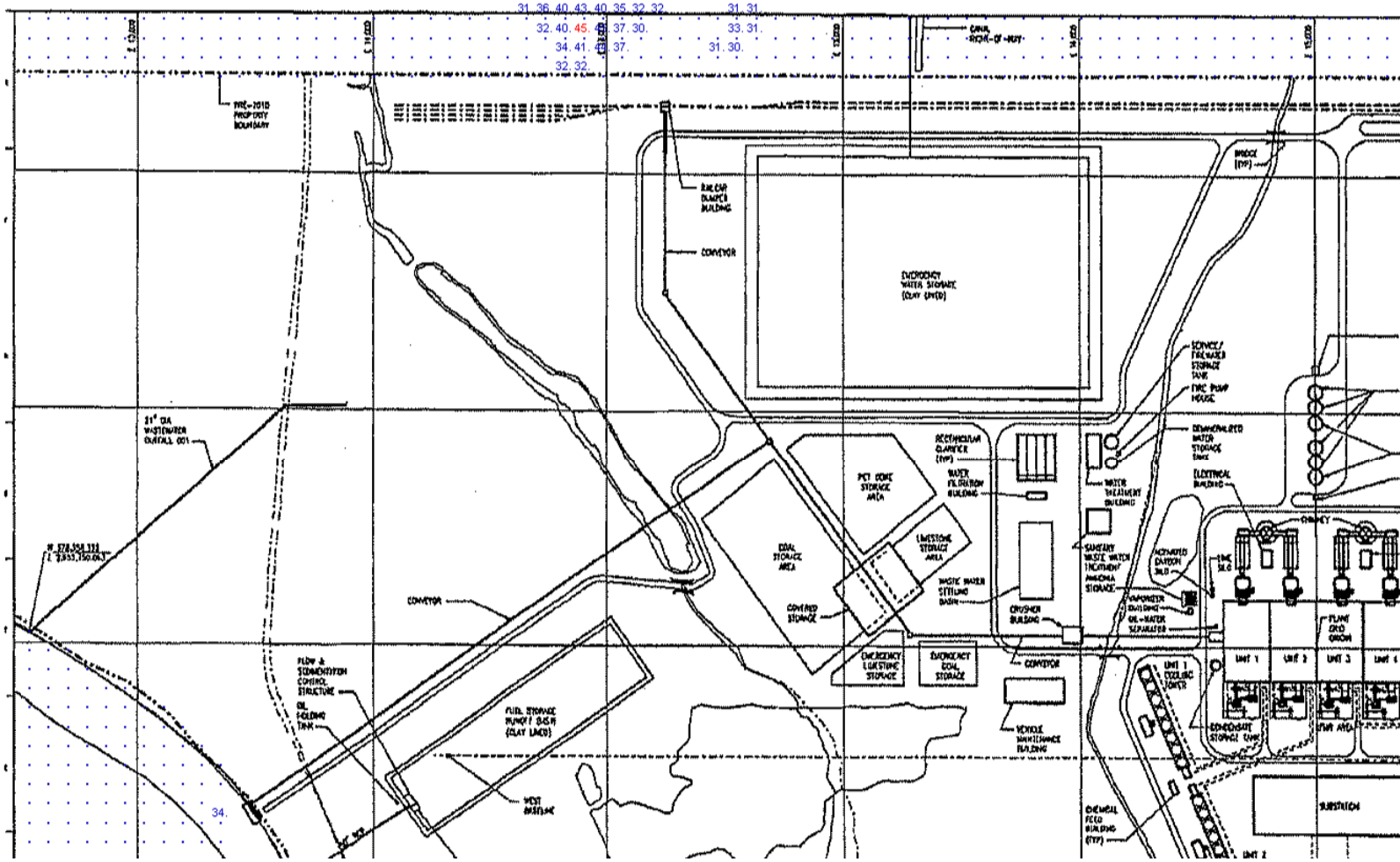


Exhibit 206

1988

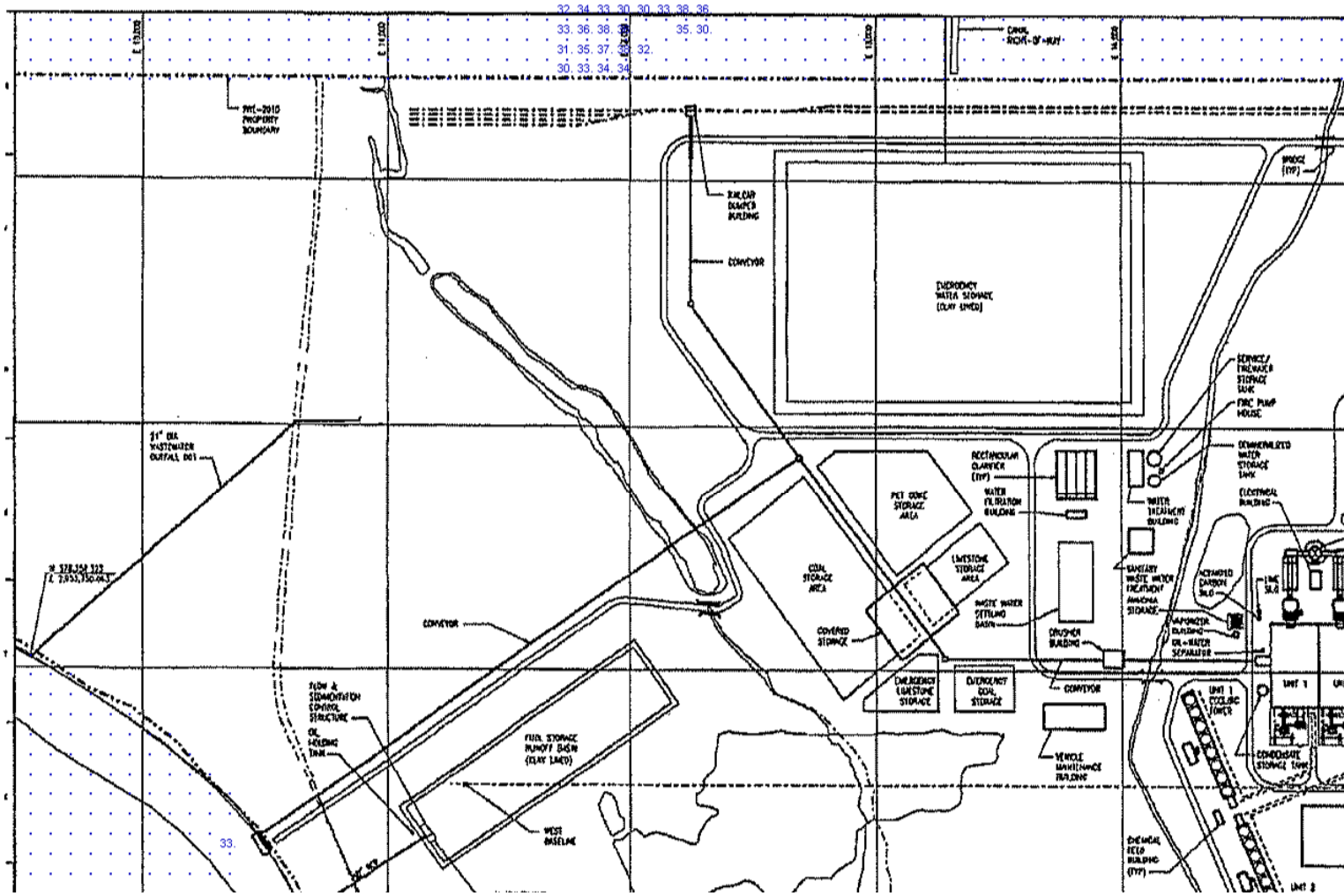
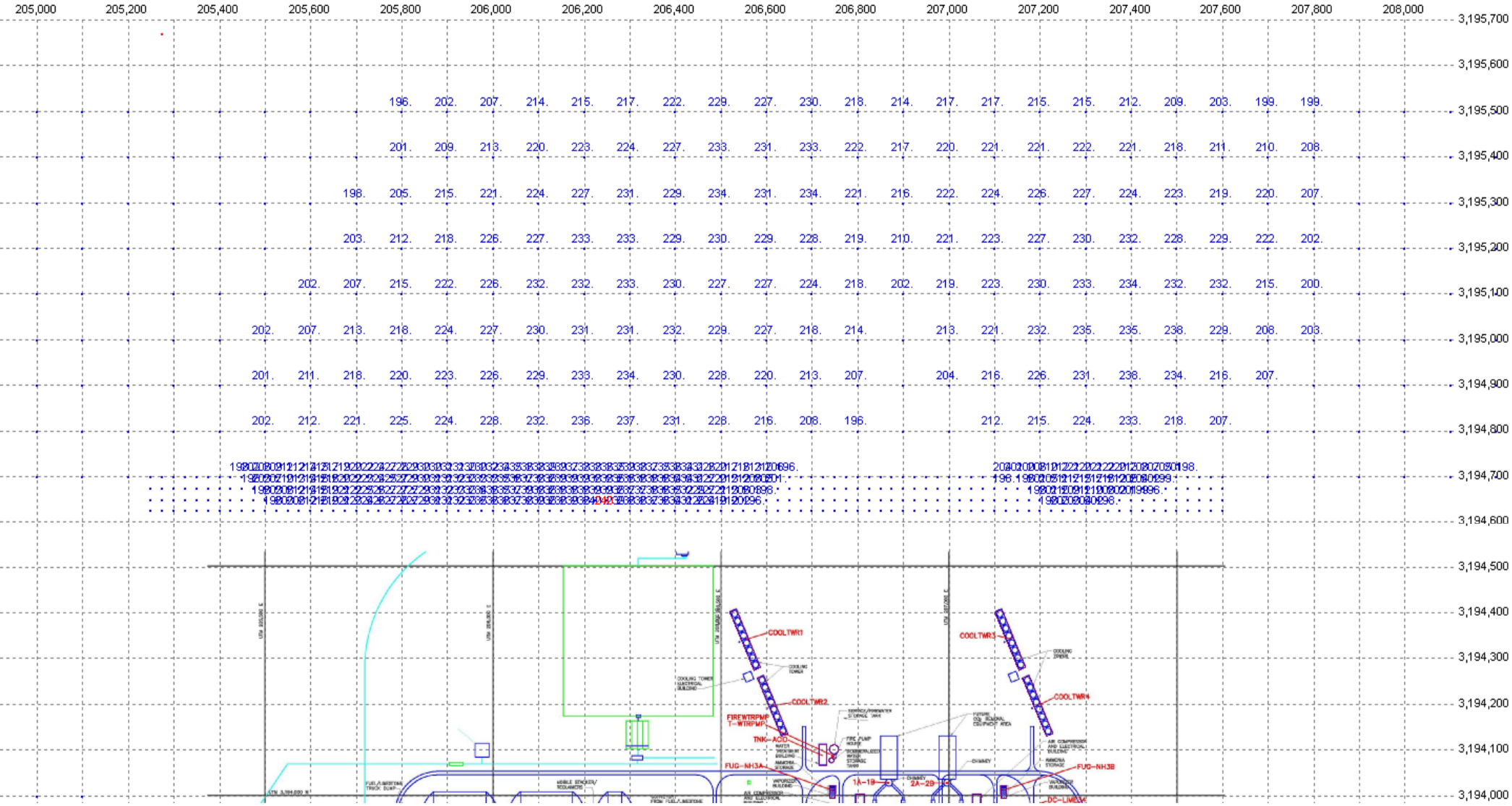


Exhibit 206

SO_2 1-Hour Evaluation - WSEC Sources Only	October 25th Site Plan	Air Permit Site Plan	1-Hour SO_2 NAAQS
Highest 4th High (µg/m^3)	240	240	196
Number of Receptors with 4th High Exceeding 1-hr NAAQS	406	406	
Total Number of Receptors	3,492	3,492	
Number of Receptors where WSEC is Significant (≥ SIL = 7.8 µg/m^3)	3,492	3,492	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COOLTWR2
COOLTWR3
COOLTWR4
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2A-29
DC-LIMEUV

Exhibit 207

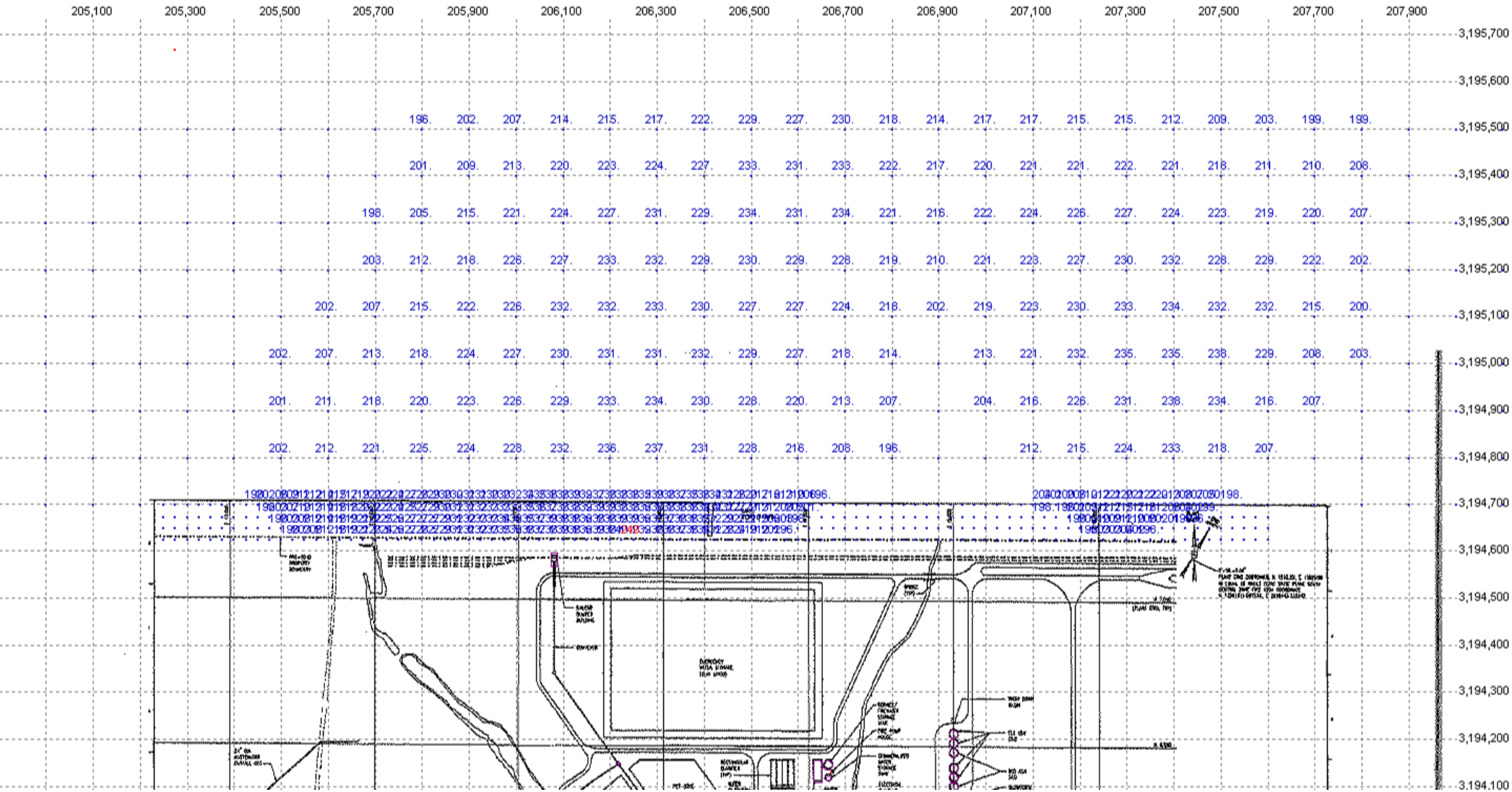
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Exhibit 207