

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

APPLICATION BY WHITE STALLION	§	BEFORE THE
ENERGY CENTER, LLC FOR	§	
PERMIT NOS. 86088, HAP28, PAL26,	§	TEXAS COMMISSION ON
AND PSD-TX-1160	§	
BAY CITY, MATAGORDA COUNTY	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE BRIEF ON SUBMISSION

BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) and files this Response Brief on Submission and in support thereof shows the following:

I. ARGUMENT.

As noted in prior briefings on this matter, the ED maintains the same position since the contested case hearing, which is that the air permit application submitted to the TCEQ, reviewed by the ED staff, and upon which the draft permit was predicated, has not changed, nor has White Stallion Energy Center (WSEC) submitted an application for amendment or alteration. In reviewing an application for an air quality authorization, the Air Permits Division considers whether the representations made by the applicant in its air permit application will meet the requirements of the Federal and Texas Clean Air Acts. TCEQ rules specifically provide that representations regarding construction plans are conditions upon which a permit is issued.¹

Section 382.0291(d) of the Texas Clean Air Act specifically applies only to *applications* for air quality authorizations under that statute and prohibits an applicant from amending an *application* within 31 days before the preliminary hearing. While the statute contemplates an instance where an amendment of an *application* "would be necessary," that provision is limited

¹ 30 TEX. ADMIN. CODE § 116.116(a)(1).

by the language "within that period" referring to the 31 day time period prior to the preliminary hearing.

Furthermore, when reviewing an air permit application, the Air Permits Division is not required to, and does not consider, the entire universe of permits or other authorizations the applicant is required to obtain, whether local, state or federal, before approving the air quality authorization. It is irrelevant to the validity of the air authorization whether the applicant submits conflicting information in other media applications or to other state or federal agencies. The relevant issue is whether the facility is built as specified in the air application or, if not, it is the responsibility of the permit holder to apply for and obtain any necessary conforming changes to the air application or authorization, the process for which is found in TCEQ rules.²

IV. CONCLUSION

Based on the foregoing, the ED maintains his position that the air permit application submitted to the TCEQ, reviewed by the ED staff, and upon which the draft permit was predicated, has not changed. Therefore, the air quality authorization issued by the Commission remains valid subject to the underlying appeal.

²*Id.* Additionally, it is common for air quality permits to include a special condition that requires submission of final plans and engineering specifications not later than thirty days prior to start up. In 2008 and 2009, the commission and ultimately the district court, respectively, upheld a permit alteration that was submitted to comply with a similar permit special condition. In the matter of the *Application of Sandow Power Company, LLC* for TCEQ Air Quality Permit No. 48437, a motion to overturn the Commission's decision to issue the permit was overruled by operation of law on September 5, 2008. *Neighbors for Neighbors and Public Citizen, Inc. v. Texas Commission on Environmental Quality*, Cause No. D-1-GN-08-002283, in the 353rd Judicial District, Final Judgment, November 25, 2009.

Respectfully submitted,

Texas Commission on Environmental Quality
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REPRESENTING THE EXECUTIVE DIRECTOR
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served on the following by the method indicated on this 12th day of April 2012.



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

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