

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

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

EXECUTIVE DIRECTOR'S REPLY 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 Reply Brief on Submission and in support thereof shows the following:

I. BRIEF INTRODUCTION AND ARGUMENT.

Environmental Defense Fund (EDF) filed its Objections and Brief with Accompanying Remand Evidence on March 22, 2012. On April 12, 2012, Sierra Club, the Executive Director (ED), and White Stallion Energy Center (WSEC) filed their respective Responses to EDF's Objections and Brief. The ED files this Reply to Sierra Club's Response, and for brevity, the ED incorporates into this Reply his prior briefings on this matter and only Replies to the relevancy arguments raised in Sierra Club's Response.

The ED has consistently maintained that the air quality permit issued to WSEC is a valid authorization based on his legal and technical review of the application submitted by WSEC and the representations contained in that application. Sierra Club has argued that the site plan WSEC submitted to the U. S. Army Corps of Engineers is relevant, pursuant to the Texas Rules of Civil Procedure, to an authorization that has already undergone a contested case hearing, among other procedural steps, and been issued by the Commission. Sierra Club's argument is predicated on its speculation regarding the final design of the plant WSEC may construct. With respect to the site plan, the air quality authorization issued to WSEC was based on the site plan

included and reviewed with the application. TCEQ rules specifically provide that representations regarding construction plans are conditions upon which a permit is issued,¹ and TCEQ rules also specifically provide for obtaining authorization for any changes to a permitted facility, whether by alteration or amendment.²

As noted in prior briefings on this matter, the ED maintains the same position identified during 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 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.

In this regard, and despite Sierra Club's speculation, Sierra Club recognizes that TCEQ rules require that WSEC "will eventually be required to obtain a permit amendment harmonizing its application representations with the plant it constructs."³ Sierra Club's stated concern is that the amendment process is less rigorous than the initial permit application process.⁴ This is simply not true. The Texas Clean Air Act clearly provides that construction of a new facility or modification of an existing facility (which requires amendment of the permit) must meet the same standard, specifically to use at least best available control technology and that there is "no indication the emissions from the facility will contravene the intent of [the Texas Clean Air Act], including protection of the public's health and physical property."⁵

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

² 30 TEX. ADMIN. CODE § 116.116(b) and (c).

³ Sierra Club's Response Brief at p. 7.

⁴ Sierra Club offers no support for this statement, statutory or otherwise.

⁵ TEX. HEALTH & SAFETY CODE § 382.0518(b). While the public notice requirements in 30 Tex. Admin. Code Ch. 39 may differ for certain applications, if any changes to the representations would affect a PSD

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 nor has an alteration request or amendment application been submitted to the TCEQ by WSEC. Therefore, the air quality authorization issued by the Commission remains valid subject to the underlying appeal.

Respectfully submitted,

Texas Commission on Environmental Quality
Mark R. Vickery, P.G., Executive Director

Stephanie Bergeron Perdue, Deputy Director
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Robert Martinez, Director
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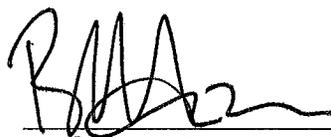
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REPRESENTING THE EXECUTIVE DIRECTOR
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served on the following by the method indicated on this 26th day of April 2012.

A handwritten signature in black ink, appearing to read 'Booker Harrison', written over a horizontal line.

Booker Harrison, Senior Attorney
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SOAH Docket No. 582-09-3008; TCEQ Docket No. 2009-0283-AIR

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