

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*



Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 23, 2012

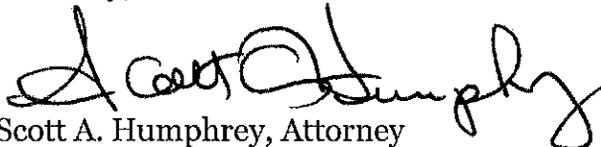
Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

RE: WHITE STALLION ENERGY CENTER, LLC
TCEQ DOCKET NO. 2009-0283-AIR
SOAH DOCKET NO. 582-09-3008

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Response to Request for Issues on Remand in the above-entitled matter.

Sincerely,


Scott A. Humphrey, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

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

APPLICATION OF	§	BEFORE THE
WHITE STALLION	§	
ENERGY CENTER, LLC	§	TEXAS COMMISSION
FOR STATE AIR	§	
QUALITY PERMIT NOS.	§	ON ENVIRONMENTAL
86088, PSD-TX-1160,	§	
HAP 28 AND PAL 26	§	QUALITY

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO REQUEST FOR ISSUES ON REMAND**

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this brief in response to a request from the General Counsel's Office to identify remand issues in the above-referenced matter.

I. Introduction

After the Commission granted White Stallion Energy Center's (White Stallion or Applicant) above-referenced permit application, the Environmental Defense Fund (EDF), a party to the contested case hearing, filed an appeal of the Commission's decision to District Court. On May 24, 2011, Judge Lora J. Livingston of the 261st District Court of Travis County, heard EDF's motion, and counsel on behalf of defendant TCEQ and intervenor White Stallion also appeared. Judge Livingston agreed with EDF that the permit should not have been granted based on the evidence presented because the public

was not afforded meaningful participation in the permit application review process. Therefore, in an order dated June 20, 2011, Judge Livingston remanded the matter to the TCEQ to consider additional evidence. In a letter dated January 13, 2012, the General Counsel requested the parties to provide issues to refer to the State Office of Administrative Hearings (SOAH) in order to limit the scope of the remand hearing

II. Discussion

After reviewing the written filings and oral arguments presented by EDF, TCEQ and the Applicant, Judge Livingston determined that the modeling upon which the Commission relied to grant the permit was inapplicable and unreliable. During the hearing, White Stallion's CEO testified that the modeling presented was based on the actual site plan that the Applicant intended to build. However, six days after the TCEQ issued its final order, the Applicant filed a new and different site plan with the Army Corps of Engineers (the Corps). The new site plan changed 73 of the 84 emission points used in the modeling upon which the Commission based its decision to grant the permit.

Judge Livingston disagreed with the TCEQ's decision to rely on the modeling based on the old site and remanded the matter back to the TCEQ to consider the Corps' site plan (Site Plan 4). She instructed the Commission to consider the impacts on the Applicant's air permit application under applicable law.

Based on Judge Livingston's order, OPIC recommends referring the following issues to SOAH: 1) Based on the modeling derived from Site Plan 4, can White Stallion demonstrate that the proposed permit does not cause adverse health impacts?; and 2)

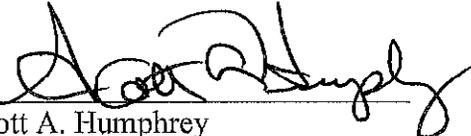
based on modeling derived from Site Plan 4, can White Stallion demonstrate that the proposed permit meets all the requirements to be granted an air quality permit?

IV. Conclusion

For the reasons provided, OPIC recommends referring the above-referenced two issues to SOAH for a remand hearing for White Stallion's application for an air permit.

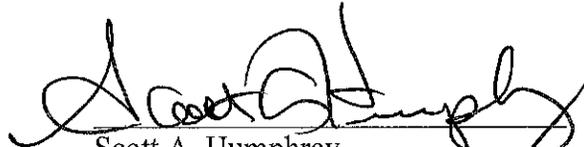
Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 
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CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2012 the original and seven copies of the foregoing was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, other electronic transmission, inter-agency mail or by deposit in the U.S. Mail.


Scott A. Humphrey

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