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January 23, 2012

Via Hand Delivery

Ms. Bridget Bohac
Chief Clerk, MC-105
Texas Commission on Environmental Quality
12100 Park 35 Circle, Building F
Austin, Texas 78753

Attn: Agenda Docket Clerk

Re: Application of White Stallion Energy Center, L.L.C.
SOAH DOCKET NO. 582-09-3008
TCEQ DOCKET NO. 2009-0283-AIR

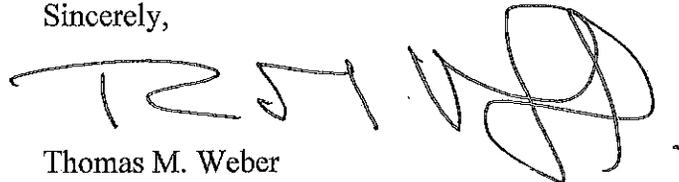
2012 JAN 23 PM 4: 07
CHIEF CLERKS OFFICE
TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Dear Ms. Bohac:

Enclosed please find an original and seven copies of Environmental Defense Fund, Inc.'s Brief on Remand.

If you have any questions concerning this filing, please do not hesitate to contact me at the number above.

Sincerely,



Thomas M. Weber

TMW/jam
5043-11
Enclosure

cc: Mr. Les Trobman, TCEQ General Counsel (via hand delivery)
Service List (via hand delivery or certified mail)

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

2012 JAN 23 PM 4: 07

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

ENVIRONMENTAL DEFENSE FUND, INC.'S
BRIEF ON REMAND

TO THE HONORABLE COMMISSIONERS AND GENERAL COUNSEL TROBMAN:

COMES NOW Environmental Defense Fund, Inc. (“EDF”) and files this Brief on Remand, and would respectfully show the following:

I. INTRODUCTION & SUMMARY:

On October 19, 2010, the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) issued a Final Order granting air quality permits to applicant White Stallion Energy Center, L.L.C. (“White Stallion” or “Applicant”) for construction of a 1,320 megawatt coal and petroleum coke-fired power plant. The Final Order hinges in large part on air dispersion modeling performed by the Applicant to demonstrate compliance with federal and state air quality requirements.

The modeling presented at the air permit hearing was based on a specific site plan (“the Air Permit Site Plan”), submitted as part of White Stallion’s application, that White Stallion’s CEO testified was the site plan White Stallion “fully and completely” intended to build. Despite this 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. This new site plan was dated

a mere six days after TCEQ issued its Final Order (the “October 25th Site Plan” or “Site Plan 4”) and moved 73 out of 84 emissions points used by White Stallion in its air dispersion modeling.

After obtaining a copy of the October 25th Site Plan via a Freedom of Information Act (“FOIA”) request filed with the Corps, EDF filed a Motion for Remand Under APA § 2001.175(c) with the Travis County District Court. See Attachment I, EDF’s Motion for Remand. EDF’s motion sought remand to allow the taking of additional evidence on the October 25th Site Plan. The District Court granted EDF’s motion. See Attachment II, Remand Order. Both White Stallion and TCEQ then challenged the District Court’s Remand Order by filing petitions for writ of mandamus first with the Third Court of Appeals and subsequently with the Texas Supreme Court. Each Court in turn respectively denied White Stallion’s and TCEQ’s petitions. TCEQ’s Office of General Counsel then requested briefing on the “procedural aspects and the scope of the remand” to comply with the Remand Order. Meanwhile, since issuance of the Remand Order, the Corps issued White Stallion its wetlands permit based on the October 25th Site Plan—thus confirming that White Stallion has no intention of building the power plant as depicted in its air permit application.

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. Anything short of a full evidentiary hearing makes a mockery of the air permitting process and encourages parties to circumvent the federal Clean Air Act (“FCAA”), Texas Clean Air Act (“TCAA”), TCEQ rules, and constitutional due process. Given the wholesale changes to the site plan, the Commission must require that the Applicant resubmit its application as required pursuant to Texas Health & Safety Code § 382.0291(d).¹ At the very least, this matter should be remanded to the State

¹ As discussed below, the Remand Order makes no direct mention of § 382.0291(d). But the Remand Order also does not preclude TCEQ from requiring the Applicant to comply with the plain language of § 382.0291(d).

Office of Administrative Hearings (“SOAH”) for a full evidentiary hearing, including appropriate discovery and for the taking of additional evidence on the issues identified by the District Court in the Remand Order. Specifically, additional evidence should be taken on: (1) the October 25th site plan submitted by White Stallion to the Corps; and (2) on that site plan’s “impacts on WSEC’s TCEQ air permit application under applicable law.” *See* Attachment II, Remand Order.

II. BACKGROUND:

1. 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 that the “facts included in the application” including the Air Permit Site Plan were “true and correct.” Attachment I, Exhibit A, Tab 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 Attachment I, Exhibit A, Tab 3.

2. 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. White Stallion’s air quality impacts analysis and supporting modeling were based only on the now outdated Air Permit Site Plan. Attachment I, Exhibit A, Tab 3 at White Stallion Exhibit 103, p. 15 of 515.

3. In February 2010, two Administrative Law Judges (“ALJs”) from SOAH conducted an evidentiary hearing on White Stallion’s air permit application.

² See 30 TAC § 116.160(c)(2)(B).

4. 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. Attachment I, 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. Attachment I, Exhibit C, pp. 148-154.

5. Despite the fact that these subsequently filed site plans were different than and conflicted with the Air Permit Site Plan, White Stallion's CEO Frank Rotondi 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.

Attachment I, 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.³ Attachment I, Exhibit B, p.12; Exhibit C, p. 88-90.

6. 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. Attachment I, Exhibit A, Tab 4. These e-mails, exchanged more than a year before the contested

³ 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 so-called "development committee." Attachment I, Exhibit B, p. 12.

case held on the air permit application, acknowledged that these changes “may affect the wastewater permit and the air dispersion modeling.”⁴ *Id.*

7. Based on this evidence, EDF moved to dismiss or alternatively remand White Stallion’s application to TCEQ pursuant to § 382.0291(d) of the Texas Health & Safety Code. Attachment I, 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 amendment to the Air Permit Site Plan or showed at least 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 intended to build, which was unclear at that time.

8. 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

⁴ 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 the 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. Attachment I, Exhibit A, Tab 4.

according to [the air permit] site layout.” Attachment I, Exhibit C, pp. 77-78. As the ALJs state in their Proposal for Decision (PFD):

Mr. Rotondi testified that WSEC intended to build the facility as stated in this [the air] 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.**

Attachment I, Exhibit B, p. 13-14 (emphasis added).

9. Following a six-day evidentiary hearing, the ALJs recommended that TCEQ deny White Stallion’s application on grounds other than the multiple-site-plan issue. However, on October 19, 2010, TCEQ issued the Final Order granting White Stallion’s air permit application. Attachment I, Exhibit A, Tab 1. On November 10, 2010, EDF then filed its motion for rehearing.

10. On December 2, 2010, EDF received documents in response to a FOIA request filed with the Corps. Attachment I, Exhibit A, Tab 6. These documents showed that, on or about October 25, 2010, within six days of TCEQ issuing the Final Order, White Stallion had revised its wetlands permit site plan. *Id.* White Stallion then filed this revised site plan (i.e. the October 25th Site Plan) with the Corps in November 2010. As EDF’s expert air dispersion modeler, Roberto Gasparini, Ph.D., attested in support of EDF’s Motion for Remand, the October 25th Site Plan is materially different from the Air Permit Site Plan and moves 73 of the 84 emissions points modeled by White Stallion in the air permit proceeding. Attachment I, Exhibit D, ¶ 7.⁵ Sixty-four (64) of the 73 relocated emissions points moved 100 meters or more and at least two

⁵ Non-substantive changes were made to Exhibits D and D-1 in May of 2011 to correct typographical errors in the affidavit and a copying error with Exhibit D-1. These new exhibits are behind the “Revised Exhibits” tab of Attachment I to this brief.

moved more than 750 meters. *Id.* Dr. Gasparini further testified that: “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.” Attachment I, Exhibit D, ¶ 9. TCEQ and White Stallion presented no evidence in the District Court challenging Dr. Gasparini’s affidavit.

11. 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. By letter dated December 17th, TCEQ stated that EDF’s motion for rehearing had been overruled by operation of law on December 8th but TCEQ did not rule on, or even mention, EDF’s motion to reopen the record based on this newly discovered evidence.

12. EDF then filed an administrative appeal with the Travis County District Court and filed its Motion for Remand. After oral argument on the motion, the District Court granted EDF’s motion and ordered a remand for the taking of additional evidence stating that: the additional evidence was material; there were good reasons why it was not presented before SOAH and TCEQ in the air permit proceedings; and absent granting the motion, the “public would not be afforded meaningful participation in the [air] permit application review process.” Attachment II, Remand Order. Specifically, that Court stated that additional evidence should be taken on: (1) the October 25th site plan submitted by White Stallion to the Corps; and (2) on the site plan’s “impacts on WSEC’s TCEQ air permit application under applicable law.”

13. TCEQ and White Stallion then challenged the Court’s Remand Order and filed petitions for writs of mandamus with the Third Court of Appeals, which denied the petitions. Both White

Stallion and TCEQ then filed petitions with the Texas Supreme Court seeking writs of mandamus. Like the Third Court of Appeals, the Supreme Court denied the petitions.

14. Meanwhile, on or about October 4th, 2011, the Corps granted White Stallion its wetland permit based on what appears to be the October 25th Site Plan.⁶

III. BRIEF ON REMAND:

A. TCEQ Should Require that White Stallion Resubmit Its Application Under TCAA § 382.0291(d).

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 a full 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.

⁶ <http://www.swg.usace.army.mil/whitestallion/whitestallion.asp>

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, the public has been denied that right.

B. Remand to SOAH.

Originally, White Stallion's application was direct referred to SOAH. Pursuant to the authority delegated them under TCEQ Rule 80.4, two SOAH ALJs presided over pre-hearing discovery and a six-day evidentiary hearing. 30 Tex. Admin. Code § 80.4(a)(2) (stating "The Commission delegates to SOAH the authority to conduct hearings designated by the Commission"). In the event TCEQ decides not to require White Stallion to resubmit its application under § 382.0291(d), it should remand to SOAH for discovery and a hearing on the issues identified by the District Court in the Remand Order. Failure to hold a full evidentiary hearing, with appropriate discovery, now would only result in reversal and remand for a full hearing later. In the words of the Third Court of Appeals, "substantial evidence review on an agency record is simply 'not possible' absent the opportunity to develop that record through a contested-case or adjudicative hearing." *City of Waco v. Texas Commission on Environmental Quality*, 346 S.W.3d 781, 818 (Tex.App. – Austin 2011, pet pending), quoting *Texas Department of Ins. v. State Farm Lloyds*, 260 S.W.3d 233, 245 (Tex.App. – Austin 2008, no pet.).

Absent requiring the Applicant to resubmit its application under § 382.0291(d), remanding White Stallion's air permit application to SOAH for the taking of additional evidence consistent with the Remand Order best protects EDF's due process rights and those rights afforded EDF under the Texas Administrative Procedure Act, including the right to present evidence and argument on each issue remanded for the taking of additional evidence. Tex. Gov't Code § 2001.051.⁷ Additionally, remanding White Stallion's air permit application to SOAH is consistent with TCEQ's delegating to SOAH the authority to conduct hearings and consistent with TCEQ's own participation rules governing the rights of parties. Those rights include the right to conduct discovery, present a direct case, cross-examine witnesses, make oral and written arguments, and otherwise fully participate as a party to the proceeding. 30 Tex. Admin. Code § 80.115(a). Importantly, remanding to SOAH provides EDF with an opportunity for an evidentiary hearing on the plant White Stallion *actually intends to build*.

C. Scope of Remand.

The Remand Order sets out the scope of remand in terms of the issues for which additional evidence is required; namely (1) the October 25th site plan submitted by White Stallion to the Corps; and (2) on the site plan's "impacts on WSEC's TCEQ air permit application under applicable law." As Dr. Gasparini's unchallenged testimony points out, to determine the impacts associated with the new site plan requires new dispersion modeling. This in turn requires full discovery on the changes to the site plan, on the impacts of those changes, and on White Stallion's ability to comply with applicable laws, including 40 CFR § 52.21(k).

⁷ See also *Geeslin v. State Farm Lloyds*, 255 S.W.3d 786, 802 (Tex.App. – Austin 2008) ("In an administrative hearing, due process means that parties be afforded a full and fair hearing on disputed fact issues."); *Id.* ("A full and fair hearing includes the right to cross-examine adverse witnesses and to present and rebut evidence."); *Id.* at 804 (A party is "denied a full and fair hearing" if the agency "denie[s] the discovery it requested.").

IV. CONCLUSION:

EDF respectfully requests that TCEQ require the Applicant to comply with § 382.0291(d). Absent that, EDF requests that TCEQ remand to SOAH for discovery and hearing on the issues raised in the Remand Order.

Respectfully submitted,



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Paul R. Tough

State Bar No. 24051440

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Attorneys for Environmental Defense Fund, Inc.

CERTIFICATE OF SERVICE

This is to certify that on this the 23rd day of January, 2012, the foregoing document has been served by hand-delivery and/or certified mail return receipt requested to the addressees listed below:

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Thomas M. Weber

ENVIRONMENTAL DEFENSE	§	IN THE DISTRICT COURT OF
FUND, INC.,	§	
PLAINTIFF	§	
	§	
VS.	§	TRAVIS COUNTY, TEXAS
	§	
TEXAS COMMISSION ON	§	
ENVIRONMENTAL QUALITY,	§	
	§	
DEFENDANT	§	261 st 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 (NO₂), sulfur dioxide (SO₂), 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 ($\mu\text{g}/\text{m}^3$) of the 30 $\mu\text{g}/\text{m}^3$ short-term Prevention of Significant Deterioration ("PSD") increment standard for particulate matter with a diameter of 10 microns or less ("PM₁₀"). *Id.* at ¶ 5. All 73 of the emissions points that are at different locations under the new site plan are sources of PM₁₀. *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.

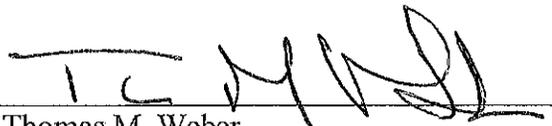
CONCLUSION AND PRAYER

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
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(512) 327-6566 FAX

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Helen Currie Foster
State Bar No. 24008379
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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 on the following counsel of record:

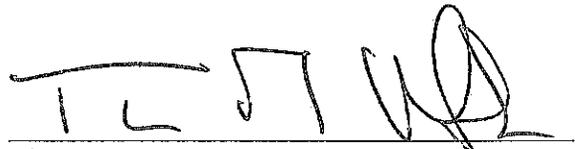
Nancy Olinger
Brian E. Berwick
Cynthia Woelk
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

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.

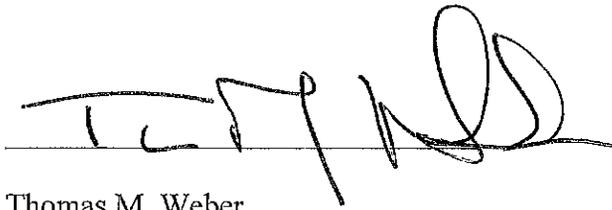
5. Attached hereto as Attachment 3 are true and correct copies of excerpts from the Air Quality Modeling Analysis performed by White Stallion in the TCEQ Proceeding. Attachment 3 consists of portions of White Stallion Exhibits 103 and 109 submitted by White Stallion as evidence in the TCEQ Proceeding 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.

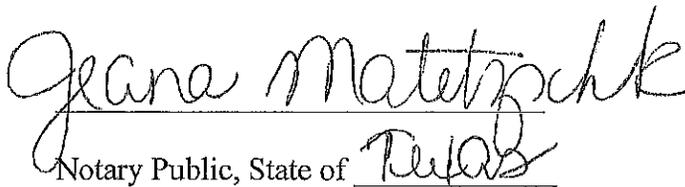
8. Attached hereto as Attachment 6 are true and correct copies of documents received by my office from the Corps in response to EDF’s FOIA requests in Attachment 5.

Further affiant sayeth not."



Thomas M. Weber

SUBSCRIBED AND SWORN to before me, the undersigned notary, on this the 11th day of March, 2011, to which witness my hand and official seal.



Jeana Matetzschk
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. BDF 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, 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



A handwritten signature in black ink, appearing to read 'Shanon G. Disorbo', written over the right side of the professional seal.

United Kingdom Australia USA Canada Ireland Netherlands Malaysia



**Texas Commission on Environmental Quality
Form PI-1 General Application for
Air Preconstruction Permit and Amendments**

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	<input checked="" type="checkbox"/> YES <input type="checkbox"/> 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)?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> 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)	<input checked="" type="checkbox"/> YES <input type="checkbox"/> 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):	<input type="checkbox"/> YES <input checked="" type="checkbox"/> 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:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
XIII. PROFESSIONAL ENGINEER (P.E.) SEAL	
Is the estimated capital cost of the project greater than \$2 million dollars?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
If "YES," the application must be submitted under the seal of a Texas licensed Professional Engineer (P.E.).	
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 <u>CRIMINAL OFFENSES</u> 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 <u>CRIMINAL PENALTIES</u> .	
NAME: <u>Randy Bird</u>	SIGNATURE: <u><i>R Bird</i></u> DATE: <u>9-5-08</u>
Original Signature Required	



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



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**

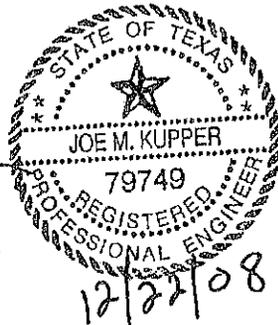
Dear Mr. Hamilton:

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.

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

United Kingdom Australia USA Canada Ireland Netherlands Malaysia

I:\Projects\White Stallion\Air\modelling\WSEC modeling submittal.doc

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.

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.

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 questions 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 -

A-4

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

WS10011782
CONFIDENTIAL

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
Co: 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

WS10011783

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

WS10011784
CONFIDENTIAL

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

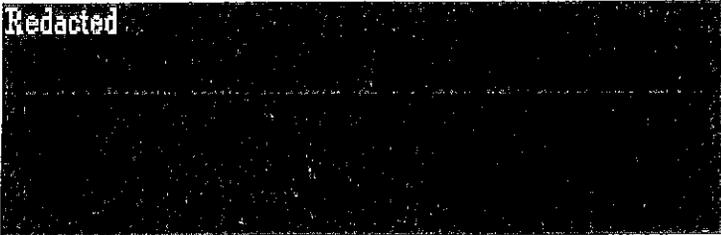
-----Original Message-----

From: Shell, Larry [mailto:Shell.Larry@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 questions 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

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 WSFC'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

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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 HIF 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

WS10001591
Confidential

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: shelllarry@stanleygroup.com

<<21353x02_wetlands.pdf>>

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,


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

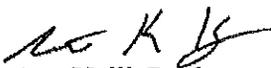
Dear Mr. Weber,

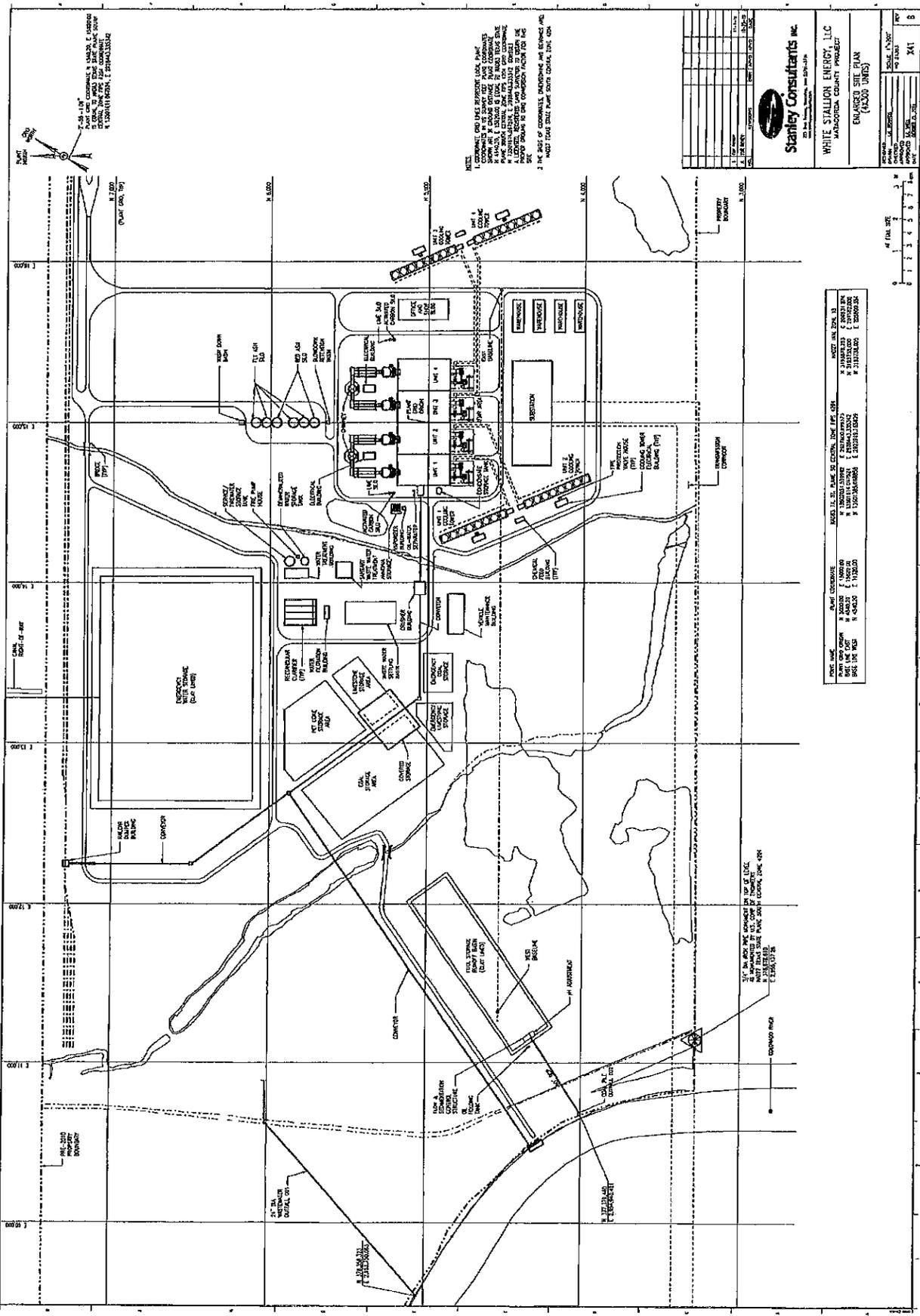
Reference is made to your Freedom of Information Act (FOIA) requests of November 17, 2010 the requested information was researched and reviewed. The processing cost is FA-11-0023 is \$191.00. The cost is for research, review and material reproduced, for FOIA number FA-11-0023. Please make your check 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



NOTES:
 1. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
 2. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
 3. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.

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NO.	REVISION	DATE	BY	CHKD.
1	ISSUED FOR PERMIT	08/15/11	JL	MS
2	REVISED PER COMMENTS	08/15/11	JL	MS
3	REVISED PER COMMENTS	08/15/11	JL	MS
4	REVISED PER COMMENTS	08/15/11	JL	MS
5	REVISED PER COMMENTS	08/15/11	JL	MS
6	REVISED PER COMMENTS	08/15/11	JL	MS
7	REVISED PER COMMENTS	08/15/11	JL	MS
8	REVISED PER COMMENTS	08/15/11	JL	MS
9	REVISED PER COMMENTS	08/15/11	JL	MS
10	REVISED PER COMMENTS	08/15/11	JL	MS

Stanley Consultants Inc.
 225 West 17th Street, Suite 1000
 New York, NY 10011-3603
 Phone: (212) 850-8000
 Fax: (212) 850-8001
 Email: stanley@stanleyconsultants.com

WHITE STATION ENERGY, LLC
 10000 WHITE STATION ROAD
 MANASSAS COUNTY, VIRGINIA 20108
 (4000 UNITS)

PROJECT NAME: WHITE STATION ENERGY, LLC
 PROJECT NO: WSE-11-001
 SHEET NO: 11-001-001
 DATE: 08/15/11
 DRAWN BY: JL
 CHECKED BY: MS

SCALE: AS SHOWN
 NORTH ARROW: POINTING UP

DATE: 08/15/11
 TIME: 10:00 AM

PROJECT NO: WSE-11-001
 SHEET NO: 11-001-001

DATE: 08/15/11
 TIME: 10:00 AM

PROJECT NO: WSE-11-001
 SHEET NO: 11-001-001

DATE: 08/15/11
 TIME: 10:00 AM

PROJECT NO: WSE-11-001
 SHEET NO: 11-001-001



Stanley Consultants

225 Iowa Avenue, Des Moines, Iowa 50319
www.stanleyconsultants.com

WHITE STALLION ENERGY NATAGORDA COUNTY PROJECT

ENLARGED SITE PLAN (4X300 UNITS)

DESIGNED	_____	
DRAWN	K.M. RICHARDS	50
CHECKED	_____	NO
APPROVED	_____	
APPROVED	J.A. BAKER	
DATE	OCTOBER 29, 2010	

1000 _____



REPLY TO
ATTENTION OF

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

received
7/29/10

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,

FOI:

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. <i>SWG-2009-00945</i>	2. FIELD OFFICE CODE	3. DATE RECEIVED <i>SEP 28 2009</i>	4. DATE APPLICATION COMPLETED
---------------------------------------------	----------------------	----------------------------------------	-------------------------------

(ITEMS BELOW TO BE FILLED BY APPLICANT)

5. APPLICANT'S NAME <i>White Stallion Energy Center, LLC</i>	8. AUTHORIZED AGENT'S NAME & TITLE (an agent is not required) <i>Scott W. Jecker - President</i>
6. APPLICANT'S ADDRESS <i>1302 Waugh Drive #896 Houston, Texas 77019</i>	9. AGENT'S ADDRESS <i>3413 Hunter Road San Marcos, Texas 78666</i>
7. APPLICANT'S PHONE NUMBERS WITH AREA CODE a. Residence b. Business <i>713-523-0305</i>	10. AGENT'S PHONE NUMBERS WITH AREA CODE a. Residence b. Business <i>512-353-3344</i>

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.

[Signature]
APPLICANT'S SIGNATURE

9-23-09
DATE

NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE (see instructions) <i>White Stallion Energy Center (WSEC)</i>	
13. NAME OF WATERBODY, IF KNOWN (if applicable) <i>Colorado River</i>	14. PROJECT STREET ADDRESS (if applicable)
15. LOCATION OF PROJECT <i>Matagorda TX COUNTY STATE</i>	
16. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions) <i>Mile Marker 14 of the Colorado River, N 28 50'37.79" W 96 00' 44.11"</i>	
17. DIRECTIONS TO THE SITE <i>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.</i>	

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)

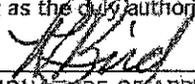
See attached list.

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. PAL28	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

9-23-09
DATE


SIGNATURE OF AGENT

9-23-09
DATE

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 willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, factitious, 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 § BEFORE THE STATE OFFICE
WSEC ENERGY CENTER, L.L.C. §
APPLICATION FOR AIR QUALITY § OF
PERMIT NOS. 86088, HAP28, PAL26, §
AND PSD-TX-1160 § ADMINISTRATIVE HEARINGS

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- whether WSEC's ozone modeling met the requirements of law;
- whether WSEC properly used PM₁₀ 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

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

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

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

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Exhibit C

<p>1 APPEARANCES 2 FOR THE APPLICANT: 3 Mr. Eric Groten 4 Mr. Patrick Lee 5 WATSON & LEE 6 2101 VIA ROCOCCA 7 Suite 100 8 Austin, Texas 78700 9 Telephone: 512.542.4792 - Fax: 512.239.3333 10 email: eric@watsonlee.com 11 patrick@watsonlee.com 12 13 FOR SIERRA CLUB AND NO COAL COALITION: 14 Mr. Layla Mansuri 15 Mr. Christina Mann 16 1131 San Antonio Street 17 Suite 200 18 Austin, Texas 78701 19 Telephone: 512.427.4417 - Fax: 512.476.4219 20 email: layla@sierraclub.org 21 christina@sierraclub.org 22 23 FOR ENVIRONMENTAL DEFENSE FUND, INC.: 24 Mr. Homer H. Weber 25 Mr. Paul F. Tough 26 WEBER, MANSOURI & MALLER 27 1210 Park 35 Circle 28 Building A 29 Austin, Texas 78753 30 Telephone: 512.337.6111 - Fax: 512.337.6556 31 email: hweber@edf.org 32 ptough@edf.org 33 34 FOR THE EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON 35 ENVIRONMENTAL QUALITY: 36 Mr. Douglas Hadden 37 Mr. Benjamin Foss 38 12100 Park 35 Circle 39 Building A 40 Austin, Texas 78753 41 Telephone: 512.339.6113 - Fax: 512.339.6554 42 email: douglas@tcqg.state.tx.us 43 benjamin@tcqg.state.tx.us</p>	<p>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, HAP26, 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,</p>
<p>1 APPEARANCES - CONTINUED 2 FOR THE OFFICE OF PUBLIC INTEREST COUNSEL OF THE TEXAS 3 COMMISSION ON ENVIRONMENTAL QUALITY: 4 Mr. Scott Humphrey 5 Attorney 6 12100 Park 35 Circle 7 Building F 8 Austin, Texas 78753 9 Telephone: 512.239.6574 - Fax: 512.239.6377 10 email: shumphre@tcqg.state.tx.us</p>	<p>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 & Maller 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. MANSOURI: Good morning, Judges. My 17 name is Layla Mansuri, 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 Honor. My name is Scott Humphrey here on behalf of 25 the Office of Public Interest Counsel of the TCEQ, and</p>

<p>1 I'm ready.</p> <p>2 JUDGE QUALTROUGH: Okay. ED?</p> <p>3 MR. HARRISON: Good morning. Booker</p> <p>4 Harrison and Ben Rhen, TCEQ office of legal services.</p> <p>5 We're here on behalf of the Executive Director.</p> <p>6 JUDGE QUALTROUGH: Okay. Are there any</p> <p>7 preliminary matters that we need to address before we</p> <p>8 take a witness up?</p> <p>9 MR. WEBER: Yes, Your Honor.</p> <p>10 JUDGE QUALTROUGH: Okay.</p> <p>11 MR. WEBER: If I may, Environmental</p> <p>12 Defense Fund came across some documents beginning</p> <p>13 Sunday and continuing into Monday. These were --</p> <p>14 these are permit applications filed by the applicant</p> <p>15 with the water quality division of the TCEQ.</p> <p>16 They're -- it's a wastewater discharge permit, and</p> <p>17 also an application for a 404 dredge and fill permit</p> <p>18 filed with the U.S. Army Corps of Engineers. Both of</p> <p>19 those applications were filed subsequent to the</p> <p>20 application at issue today -- or the applications at</p> <p>21 issue today.</p> <p>22 As part of the application that we are</p> <p>23 discussing today, there is a site plan attached to it.</p> <p>24 And that site plan was first filed with the agency</p> <p>25 back in September 2008. It shows, among other things,</p>	<p>1 impacts on wetlands, specifically -- or primarily</p> <p>2 forested wetland. And so those changes were made in</p> <p>3 anticipation of the 404 permit filed in September of</p> <p>4 2009.</p> <p>5 The wastewater discharge permit, by the</p> <p>6 way, was filed in February 2009; air permit quality</p> <p>7 application, September 2008, and the air impacts</p> <p>8 analysis portion of it in December 2008 and</p> <p>9 February 2009.</p> <p>10 But the effect of changing the site</p> <p>11 plan, moving 22 out of 56 emissions points, some</p> <p>12 hundred of meters, is that the modeling that the</p> <p>13 applicant used -- dispersion modeling that the</p> <p>14 applicant used to predict its impacts is based on a</p> <p>15 site plan that they've now submitted to other</p> <p>16 agencies, certified to other agencies as the true and</p> <p>17 correct site plan, but it's different than the site</p> <p>18 plan that they certified as true and correct in the</p> <p>19 air quality application.</p> <p>20 JUDGE QUALTROUGH: Okay.</p> <p>21 MR. WEBER: Now, the motion is being</p> <p>22 raised now because, again, I got copies of these</p> <p>23 permit applications on --</p> <p>24 JUDGE QUALTROUGH: What is the motion?</p> <p>25 MR. WEBER: The motion is a motion to</p>
<p>1 the location of 56 different particulate emissions</p> <p>2 points, which are all referenced in the application.</p> <p>3 It's from those points that they calculate or predict</p> <p>4 ground-level concentrations of the pollutants emitted</p> <p>5 from the plant and the impacts related to those</p> <p>6 emissions.</p> <p>7 Well, since White Stallion filed its air</p> <p>8 quality permit application, it's filed, like I</p> <p>9 indicated, the wastewater discharge permit application</p> <p>10 and a 404 permit application. The wastewater</p> <p>11 discharge application was prepared and submitted on</p> <p>12 behalf of White Stallion by the same set of</p> <p>13 consultants that worked on the -- or at least the same</p> <p>14 company that worked as consultants on this</p> <p>15 application, and it was certified -- signed and</p> <p>16 certified by Randy Bird, White Stallion's chief</p> <p>17 operating officer.</p> <p>18 The discharge permit and the 404 permit</p> <p>19 show a completely different site plan, at least as it</p> <p>20 relates to the entire western half of the plant. And</p> <p>21 it shows at least 22 of the 56 particulate emissions</p> <p>22 points as being depicted at a different location in</p> <p>23 these subsequently filed permit applications.</p> <p>24 Emails produced by the applicant show</p> <p>25 that the change in the site plan was done to reduce</p>	<p>1 dismiss, or in the alternative, a motion to remand.</p> <p>2 The application on file is not the</p> <p>3 application that they've now subsequently sworn to and</p> <p>4 attested is the site plan in these other applications.</p> <p>5 And I have a series of exhibits I would like to offer,</p> <p>6 all public records or documents produced by the other</p> <p>7 side, that shows we're talking about a site plan that</p> <p>8 they've now said is not their current site plan.</p> <p>9 And we have not had a chance to review</p> <p>10 this site plan, modeled emissions from that site plan</p> <p>11 or do any kind of analysis on it, and they've had it</p> <p>12 and known about it. And their consultants in this</p> <p>13 case have known about it for over a year, and they've</p> <p>14 submitted to you today, and are about to swear to</p> <p>15 their prefiled testimony, that their site plan that</p> <p>16 they've submitted to you as part of their application</p> <p>17 is true and correct.</p> <p>18 Before they do that, I think it's</p> <p>19 incumbent upon me to raise this new issue with you. I</p> <p>20 apologize for the fact that it's the first thing we</p> <p>21 have to deal with. But, again, this issue came to my</p> <p>22 attention Sunday night.</p> <p>23 JUDGE QUALTROUGH: Okay. Mr. Groten, do</p> <p>24 you have a response?</p> <p>25 MR. GROTEN: I do, Your Honor. The</p>

<p>10</p> <p>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 charges, 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,</p>	<p>12</p> <p>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</p>
<p>21 frankly, meritless. We are going to get a permit, 22 assuring 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.</p>	<p>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?</p>
<p>11</p> <p>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,</p>	<p>13</p> <p>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</p>

<p style="text-align: right;">14</p> <p>1 Coal Coalition.</p> <p>2 It would create a situation where we</p> <p>3 would have to litigate whether or not there was right</p> <p>4 to public participation on an issue that we currently</p> <p>5 have a right to participation on. And so if there are</p> <p>6 two or three different site plans for the same</p> <p>7 facility that have been sworn to in an application,</p> <p>8 either in front of TCEQ or a federal agency, I don't</p> <p>9 see how it's not relevant to see which site plan we're</p> <p>10 actually talking about.</p> <p>11 And if there is a change, then those</p> <p>12 changes are certainly relevant in this particular</p> <p>13 proceeding that we're at today because, again, we're</p> <p>14 going -- I understand what Mr. Groten is saying, they</p> <p>15 can come in later to conform the application and then</p> <p>16 possibly subject the hearing to new public</p> <p>17 participation, or the public may have to litigate the</p> <p>18 right to do that, a right that we already have today.</p> <p>19 So it puts us in a -- it puts the public</p> <p>20 in a position of not understanding what is actually</p> <p>21 being proposed, of having multiple representations of</p> <p>22 potentially different site plans, and it's something</p> <p>23 that we're here and we can at least address that issue</p> <p>24 first and then decide how to proceed, but at a</p> <p>25 minimum, I believe we should address that issue.</p>	<p style="text-align: right;">15</p> <p>1 MR. HUMPHREY: May I also respond, Your</p> <p>2 Honor?</p> <p>3 JUDGE QUALTROUGH: Yes.</p> <p>4 MR. HUMPHREY: Thank you. When</p> <p>5 Mr. Groten was making his response, he was saying he's</p> <p>6 basically standing behind the permit that's here, and</p> <p>7 if they have to amend it, they have to amend it. He</p> <p>8 did not get to the core of the motion; which is, did</p> <p>9 he change the site plan.</p> <p>10 And I think that's a very significant</p> <p>11 thing, because if the answer is, "Yes, we changed the</p> <p>12 site plan," it would be OPIC's position that to go</p> <p>13 through a hearing on the old site plan is a very, very</p> <p>14 significant waste of time and resources for your</p> <p>15 agency and my agency and all of us who are here</p> <p>16 because then we have to come back and relitigate the</p> <p>17 actual site plan.</p> <p>18 And if it's true that the site plan has</p> <p>19 changed, what we would really be doing here is</p> <p>20 litigating a hypothetical application. If there is a</p> <p>21 change in site plan, it does not make any sense for</p> <p>22 all of us to sort of march forward in this when we</p> <p>23 know there would be a change at the end. So if, in</p> <p>24 fact, what Mr. Weber has said is true, that the</p> <p>25 emission points have changed, I would concur with his</p>
<p style="text-align: right;">16</p> <p>1 motion, or at the very, very least, this has to be</p> <p>2 amended. But this proceeding as we stand here would</p> <p>3 have to stop if there really has been a change.</p> <p>4 MR. GROTEN: May I -- I'm sorry.</p> <p>5 MR. WEBER: And I also would like to</p> <p>6 make a comment.</p> <p>7 JUDGE QUALTROUGH: I'm sorry. Say that</p> <p>8 again.</p> <p>9 MR. WEBER: I would like to make another</p> <p>10 comment, if I may.</p> <p>11 JUDGE QUALTROUGH: Okay.</p> <p>12 MR. WEBER: First off, there's no</p> <p>13 guarantee that we'll get an opportunity for a hearing</p> <p>14 because it could be an amendment. It could be a</p> <p>15 permit alteration. We don't know what the process</p> <p>16 will be.</p> <p>17 Secondly, there's also no guarantee that</p> <p>18 they will fix or amend the representations they've</p> <p>19 made to the Army Corps of Engineers or the water</p> <p>20 quality division of the TCEQ, and if it is, in fact,</p> <p>21 their intent to mitigate and limit impacts on</p> <p>22 wetlands, then what they have sworn to you today and</p> <p>23 what they plan to offer into evidence is not valid.</p> <p>24 It's not truthful.</p> <p>25 Now, there's a statutory provision.</p>	<p style="text-align: right;">17</p> <p>1 It's 382.0291 of the Health and Safety Code, Texas</p> <p>2 Clean Air Act. It says that if it's necessary to</p> <p>3 amend an application within 31 days of the hearing</p> <p>4 on -- of a public hearing in this case, then that</p> <p>5 application should be sent back and go through the</p> <p>6 process again; be subject to notice, be subject to</p> <p>7 comment, be subject to review by the air quality</p> <p>8 division. They haven't seen what the applicant plans</p> <p>9 to do. Neither have we, and neither have you.</p> <p>10 That's exactly what we're doing, is</p> <p>11 we're going through a hypothetical that they've</p> <p>12 represented to other agencies they intend to change.</p> <p>13 JUDGE QUALTROUGH: Mr. Groten?</p> <p>14 MR. GROTEN: It is -- it would be the</p> <p>15 first large-scale industrial project -- grass roots</p> <p>16 project development in history that did not undergo</p> <p>17 consideration of evolution in its design during the</p> <p>18 course of a multi-year development process.</p> <p>19 It is possible that the designs -- that</p> <p>20 some of the layout changes -- and there's no change in</p> <p>21 equipment. There's no change in facilities. It's</p> <p>22 just there were some -- apparently some changes made</p> <p>23 in the locations of various material handling</p> <p>24 facilities and so forth that may or may not be the</p> <p>25 final design, and I can probably assure you, Your</p>

<p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p>19</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>
<p>19</p> <p>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.</p> <p>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 --</p> <p>12 JUDGE QUALTROUGH: Okay. 13 (Brief pause)</p> <p>14 MR. WEBER: Your Honors, can I have an 15 opportunity to present the evidence to support my 16 notion?</p> <p>17 JUDGE KEEPER: You're just about to. 18 MR. WEBER: Okay. Great. Thank you.</p> <p>19 JUDGE KEEPER: We're trying to figure 20 out processes here.</p> <p>21 (Brief pause)</p> <p>22 JUDGE QUALTROUGH: All right. Am I out? 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 --</p>	<p>20</p> <p>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.</p> <p>7 MR. WEBER: Well, if I could step 8 through it, I think I can probably save us --</p> <p>9 JUDGE QUALTROUGH: No. Let's get 10 everybody to see it first. I mean, so they can --</p> <p>11 MR. WEBER: Okay.</p> <p>12 JUDGE QUALTROUGH: Okay? I would 13 like --</p> <p>14 MR. WEBER: It was produced yesterday, 15 but I can --</p> <p>16 JUDGE QUALTROUGH: So you have got it. 17 You--all had a chance to look at it?</p> <p>18 MR. WEBER: We received it yesterday 19 afternoon. We have not had a chance to review it yet.</p> <p>20 JUDGE QUALTROUGH: Do you have staff 21 here to look at it?</p> <p>22 MR. HARRISON: Yes.</p> <p>23 JUDGE QUALTROUGH: I know it's going to 24 be a quick end -- I know it's not going to be an 25 in-depth analysis but --</p> <p>21</p>

<p style="text-align: right;">22</p> <p>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</p>	<p style="text-align: right;">24</p> <p>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</p>
<p style="text-align: right;">23</p> <p>1 what you're talking about. 2 MR. WEBER: Thank you, Your Honor. 3 MR. GROTH: 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</p>	<p style="text-align: right;">25</p> <p>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 Chinese plant, but I lose that opportunity to 25 litigate how that might interact.</p>

<p style="text-align: right;">26</p> <p>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</p>	<p style="text-align: right;">26</p> <p>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</p>
<p style="text-align: right;">27</p> <p>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</p>	<p style="text-align: right;">29</p> <p>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</p>

<p style="text-align: right;">30</p> <p>1 going to be built.</p> <p>2 MR. GROTEN: I would say they're not</p> <p>3 being forced to do anything.</p> <p>4 JUDGE KEEPER: Well, here --</p> <p>5 MR. WEBER: I can offer a witness and</p> <p>6 they can --</p> <p>7 JUDGE KEEPER: You know, at this</p> <p>8 point -- first of all, thank you for the offer of the</p> <p>9 witness, and that may be helpful to us at some point</p> <p>10 here.</p> <p>11 Clearly we are struggling with trying to</p> <p>12 balance a series of efficiencies here.</p> <p>13 MR. WEBER: Yes, Your Honor.</p> <p>14 JUDGE KEEPER: One is that there has</p> <p>15 been an enormous amount of time that the applicant, as</p> <p>16 well as the rest of the parties, have spent in getting</p> <p>17 ready for today's proceeding. So we would like to be</p> <p>18 able to take advantage of that.</p> <p>19 On the other hand, if there is some sort</p> <p>20 of fundamental due process violation that's occurring</p> <p>21 here, we certainly don't want to go through an entire</p> <p>22 proceeding only to be overturned at some point,</p> <p>23 whether administratively or judicially. So the</p> <p>24 question that we're struggling with is, well, what is</p> <p>25 the nature of this thing we're looking at? What's the</p>	<p style="text-align: right;">32</p> <p>1 talking about a difference in terms of what the number</p> <p>2 of acres are in the site plan? Are we talking</p> <p>3 about -- are we talking about where the facility</p> <p>4 itself is located within the site plan? Are we</p> <p>5 talking about something as specific apparently as</p> <p>6 emission sites? Are we talking about changes that</p> <p>7 involve 25 meters or 500 meters or a half a mile?</p> <p>8 MR. HARRISON: In this sense -- the</p> <p>9 short answer to your question is that there is no</p> <p>10 specific quantification on either of those metrics.</p> <p>11 And if I may elaborate, the applicant has submitted an</p> <p>12 application that the Executive Director has reviewed,</p> <p>13 and at this point in time, the air quality application</p> <p>14 for the permit has not been changed. It is the same</p> <p>15 application that they submitted, that the Executive</p> <p>16 Director reviewed and that the draft permit was issued</p> <p>17 predicated upon.</p> <p>18 Generally, in looking at how to handle</p> <p>19 changes to a permit, it's viewed basically in terms of</p> <p>20 alterations or amendments, and the predicate for an</p> <p>21 amendment is whether there's been a modification to a</p> <p>22 facility. And a modification -- there is a formal</p> <p>23 definition in the statute, but it's generally viewed</p> <p>24 as a change in the character or quantity of emissions.</p> <p>25 JUDGE KEEPER: Let me stop you right</p>
<p style="text-align: right;">31</p> <p>1 scope of this potential change? If it's relatively</p> <p>2 minor, then I think we have to go forward. If it is</p> <p>3 substantial, then perhaps the motion should be</p> <p>4 granted.</p> <p>5 The problem that we're having, I can</p> <p>6 tell you right now before you even present your</p> <p>7 information -- and I'm eager to see what your</p> <p>8 information is, but the problem that we're having is</p> <p>9 where is it that you draw the line at what is a</p> <p>10 substantial change?</p> <p>11 And one of the reasons that our focus</p> <p>12 keeps shifting from you over here to our left to the</p> <p>13 Executive Director, is we're looking for assistance in</p> <p>14 terms of defining what the process is here. We</p> <p>15 understand that if an applicant comes to the</p> <p>16 Commission or to the Executive Director with a</p> <p>17 proposal, it's likely, not just common -- it's likely</p> <p>18 that there are going to be some differences between</p> <p>19 the application and what is finally built.</p> <p>20 And the question that we have is, at</p> <p>21 what point is it that the change is so substantial</p> <p>22 that the Executive Director begins to pull at his</p> <p>23 collar and say, "Well, now, wait a minute"?</p> <p>24 MR. WEBER: You mean -- I'm sorry.</p> <p>25 JUDGE KEEPER: Are we talking -- are we</p>	<p style="text-align: right;">33</p> <p>1 there. So a change -- an amendment is triggered by --</p> <p>2 say those words again.</p> <p>3 MR. HARRISON: A modification.</p> <p>4 JUDGE KEEPER: And a modification is</p> <p>5 triggered by --</p> <p>6 MR. HARRISON: Well, it's generally</p> <p>7 considered a change in the character or quantity of</p> <p>8 emissions, but I think I might be straying away a</p> <p>9 little bit because what we're talking about here is</p> <p>10 whether or not there's been a change in the</p> <p>11 representations upon which the permit -- the draft</p> <p>12 permit has been issued.</p> <p>13 And like I said, the application hasn't</p> <p>14 been changed. I'm not familiar -- haven't had an</p> <p>15 opportunity to review what may have been submitted by</p> <p>16 the applicant for other -- as an application for other</p> <p>17 authorizations under -- for other programs, water</p> <p>18 quality or what have you. And the -- I'm not sure</p> <p>19 what further I can -- I mean, I'm not -- I want to be</p> <p>20 as helpful as I can. I'm not sure what further I can</p> <p>21 add because they haven't represented any change to</p> <p>22 this application.</p> <p>23 JUDGE KEEPER: Here is my question, and</p> <p>24 that is: Let's say that we go through this process</p> <p>25 and the draft permit is approved and it comes up</p>

<p style="text-align: right;">34</p> <p>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 QUAYTROUGH: 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</p>	<p style="text-align: right;">36</p> <p>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</p>
<p style="text-align: right;">35</p> <p>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?</p>	<p style="text-align: right;">37</p> <p>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 392.0291. 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</p>

<p style="text-align: right;">38</p> <p>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 in 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,</p>	<p style="text-align: right;">40</p> <p>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</p>
<p style="text-align: right;">39</p> <p>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</p>	<p style="text-align: right;">41</p> <p>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</p>

<p style="text-align: right;">42</p> <p>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</p>	<p style="text-align: right;">44</p> <p>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?</p>
<p style="text-align: right;">43</p> <p>1 permit application -- 2 JUDGE QUALTROUGH: Absolutely. 3 MR. HARRISON: -- and whether or not it 4 meets DACT 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.</p>	<p style="text-align: right;">45</p> <p>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</p>

<p style="text-align: right;">46</p> <p>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 call 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</p>	<p style="text-align: right;">48</p> <p>1 JUDGE QUALTROUGH: All right. We're off 2 the record till 10:26. 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.</p>
<p style="text-align: right;">47</p> <p>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.</p>	<p style="text-align: right;">49</p> <p>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 these 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.</p>

<p style="text-align: right;">50</p> <p>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</p>	<p style="text-align: right;">52</p> <p>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</p>
<p style="text-align: right;">51</p> <p>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.</p>	<p style="text-align: right;">53</p> <p>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</p>

<p style="text-align: right;">54</p> <p>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.</p> <p>6 JUDGE QUALTROUGH: And I assume you're 7 going to use these on cross.</p> <p>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.</p> <p>12 JUDGE QUALTROUGH: All right.</p> <p>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 depletion in the application.</p> <p>18 MR. WEBER: 123. Correct?</p> <p>19 JUDGE QUALTROUGH: 123.</p> <p>20 MR. WEBER: Thank you, Your Honors. I 21 appreciate the indulgence.</p> <p>22 [Exhibit BDF Nos. 120 through 126 23 admitted]</p> <p>24 JUDGE QUALTROUGH: Sure. I hate to ask 25 it. Do we have any other preliminary matters? I</p>	<p style="text-align: right;">56</p> <p>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.</p> <p>5 JUDGE QUALTROUGH: Okay.</p> <p>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.</p> <p>15 JUDGE QUALTROUGH: I'm sorry. Can you 16 give me the page of 11 again? Sorry to interrupt.</p> <p>17 MS. MANSURI: Page 3, Fax Page No. 4.</p> <p>18 JUDGE QUALTROUGH: Okay.</p> <p>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.</p> <p>24 If you skip down two lines, there 25 appears to be the same line numbers, and that</p>
<p style="text-align: right;">55</p> <p>1 think Sierra Club does.</p> <p>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.</p> <p>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.</p> <p>11 JUDGE QUALTROUGH: Okay.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p style="text-align: right;">57</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>18 MS. MANSURI: Sure.</p> <p>19 JUDGE KEEPER: Is that where you need me 20 to be?</p> <p>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 --</p> <p>25 JUDGE KEEPER: Right.</p>

<p style="text-align: right;">58</p> <p>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.</p>	<p style="text-align: right;">60</p> <p>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.</p>
<p>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</p>	<p>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</p>
<p style="text-align: right;">59</p> <p>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</p>	<p style="text-align: right;">61</p> <p>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 EC 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 FCEQ, 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</p>

<p style="text-align: right;">62</p> <p>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 RESPER: 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 --</p>	<p style="text-align: right;">64</p> <p>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 Topsøe. 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</p>
<p style="text-align: right;">63</p> <p>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 Topsøe 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,</p>	<p style="text-align: right;">65</p> <p>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?</p>

<p style="text-align: right;">70</p> <p>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. GROTEH: 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.</p>	<p style="text-align: right;">72</p> <p>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</p>
<p style="text-align: right;">71</p> <p>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?</p>	<p style="text-align: right;">73</p> <p>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?</p>

<p style="text-align: right;">74</p> <p>1 A No. I have not looked it over, but I take 2 you at your word.</p> <p>3 Q I'm going to ask you to turn to the signature 4 page. It would be Bates labeled -- it looks like it 5 got cut off of my copy, but it's EDF 019876. It is --</p> <p>6 A Yes, I'm there.</p> <p>7 Q It's Page 8 at the bottom. Do you see that?</p> <p>8 A 876 appears to be Page 9 in this copy.</p> <p>9 Q I'm sorry. You're right. You're right; 10 absolutely.</p> <p>11 And you'll see Randy Bird's signature 12 there. Is that right?</p> <p>13 A Yes.</p> <p>14 Q Okay. And the date of this application, as 15 certified by Mr. Bird, is February 19th, 2009. 16 Correct?</p> <p>17 A Yes.</p> <p>18 Q Is that before or after the air quality 19 permit application was filed?</p> <p>20 A After.</p> <p>21 Q How long after?</p> <p>22 A I don't remember the exact date of the filing 23 of the application of the air quality permit -- some 24 significant period of time.</p> <p>25 Q I would ask that you read into the record the</p>	<p style="text-align: right;">76</p> <p>1 submitted as part of the water quality discharge 2 application filed in February 2009 is different than 3 the site plan that was submitted as part of the air 4 quality application in September 2006?</p> <p>5 MR. GROTEN: Objections form.</p> <p>6 A Yes.</p> <p>7 MR. GROTEN: Objections form. I would 8 like to have a -- he asked -- he's assuming facts not 9 in evidence concerning whether or not there are 10 differences between the applications. He didn't ask 11 whether he was aware if there were. He said, "Are you 12 aware that there are."</p> <p>13 JUDGE QUALTROUGH: All right. Can you 14 clarify it, please, Mr. Weber?</p> <p>15 Q (BY MR. WEBER) Are you aware that there are 16 differences --</p> <p>17 MR. GROTEN: I'm sorry.</p> <p>18 JUDGE QUALTROUGH: He's asking if he's 19 aware of the differences between the applications.</p> <p>20 MR. WEBER: I can insert the word "if."</p> <p>21 Q (BY MR. WEBER) Are you aware if there are 22 difference in the site plan submitted as part of the 23 wastewater discharge permit application, excerpts of 24 which are in front of you marked as EDF 121 --</p> <p>25 A Yes.</p>
<p style="text-align: right;">75</p> <p>1 certification made on Page 9, please.</p> <p>2 A I take it you mean the first paragraph.</p> <p>3 Q Correct. Where it begins, "I, R. A. Bird,"</p> <p>4 A "I, R. A. Bird, chief operating officer, 5 certify under penalty of law that this document and 6 all attachments were prepared under my direction or 7 supervision in accordance with a system designed to 8 assure that qualified personnel properly gathered and 9 evaluated the information submitted, based on my 10 inquiry of the person or persons who manage the 11 systems or those persons directly responsible for 12 gathering the information.</p> <p>13 "The information submitted is, to the 14 best of my knowledge and belief, true, accurate and 15 complete. I am aware there are significant penalties 16 for submitting false information, including the 17 possibility of fine and imprisonment for known 18 violations." Do I need to continue?</p> <p>19 Q Yes, sir; if you don't mind, the next 20 paragraph.</p> <p>21 A "I further certify that I am authorized under 22 30 Texas Administrative Code, Section 305.44, to sign 23 this document and can provide documentation and proof 24 of such authorization upon request."</p> <p>25 Q Thank you. Are you aware that the site plan</p>	<p style="text-align: right;">77</p> <p>1 Q -- between that site plan and the site plan 2 submitted to the air quality division?</p> <p>3 A Yes.</p> <p>4 Q You are aware?</p> <p>5 A I am aware.</p> <p>6 Q Is it your testimony here today that you 7 intend to amend the wastewater discharge permit 8 application submitted in February 2009?</p> <p>9 A It is my testimony that we have submitted a 10 site plan in the air application for this project to 11 which we are fully and completely prepared to build 12 this project in every respect.</p> <p>13 We have evaluated -- as part of the 14 additional permitting process for this project, 15 including the wastewater discharge application that we 16 have filed and the 404 application that we have filed, 17 we have looked at additional environmental mitigation.</p> <p>18 It is my understanding that in so doing, 19 we have considered, although not adopted, alterations 20 to the plan submitted in this -- in the air 21 application which were represented to me by my staff 22 and consultants to be two things; one, in line with 23 mitigation of environmental impacts on this project on 24 forested wetlands, as well as immaterial changes to 25 the air emission situation, in point of fact.</p>

<p style="text-align: right;">78</p> <p>1 improvements thereto.</p> <p>2 I would point out, however, that the</p> <p>3 only adopted design of this project to date is the one</p> <p>4 submitted in this air application, and we are fully</p> <p>5 willing to comply in every respect with construction</p> <p>6 of this project according to that site layout.</p> <p>7 Q Well, I'm not sure if you answered my</p> <p>8 question, but let me restate it.</p> <p>9 Is it your intention, sitting here</p> <p>10 today, to amend the wastewater discharge permit</p> <p>11 application submitted in February 2009?</p> <p>12 A I am aware of the differences fairly</p> <p>13 recently, and we will consider such amendment.</p> <p>14 Q But you'll also agree with me that you have</p> <p>15 certified as true and correct -- your company, White</p> <p>16 Stallion Energy Center, has certified, through its</p> <p>17 chief operating officer, two distinct site plans and</p> <p>18 certified them as true and correct. Isn't that right?</p> <p>19 A Actually, I don't agree that that's what has</p> <p>20 happened here. We have submitted in our air</p> <p>21 application a site plan for this project. We have</p> <p>22 worked with the TCEQ, as I understand it, in terms of</p> <p>23 responding to the information necessary for them to</p> <p>24 evaluate it. They have provided a draft air permit on</p> <p>25 that basis.</p>	<p style="text-align: right;">80</p> <p>1 issued on this application. It is Bates labeled EDF</p> <p>2 019747.</p> <p>3 A I'm there.</p> <p>4 Q At the top, it says, "Permit Application No.</p> <p>5 SWG-2009-00945. Correct?</p> <p>6 A Yes.</p> <p>7 Q Turning back to the first page, this was an</p> <p>8 application filed on September 23, 2009. Is that</p> <p>9 right?</p> <p>10 A Yes.</p> <p>11 Q Again, this was subsequent to your air</p> <p>12 quality application. Is that correct?</p> <p>13 A That's correct.</p> <p>14 Q And it was subsequent to the wastewater</p> <p>15 discharge permit application. Is that correct?</p> <p>16 A I'm going to have to look. Is it 121 that is</p> <p>17 the wastewater application?</p> <p>18 Q Excerpts from the wastewater application;</p> <p>19 yes, sir.</p> <p>20 A Yes. So this Exhibit 122 was filed</p> <p>21 subsequent to Exhibit 121.</p> <p>22 Q And you indicated that you've had discussions</p> <p>23 with the Army Corps of Engineers concerning a possible</p> <p>24 mitigation -- wetlands mitigation plan related to this</p> <p>25 plant site. Is that correct?</p>
<p style="text-align: right;">79</p> <p>1 We have discussed with the Army Corps of</p> <p>2 Engineers the potential that they would like us to</p> <p>3 seek additional mitigation of wetlands, which we</p> <p>4 consider to be an environmental improvement</p> <p>5 potentially to this project, and we have put in that</p> <p>6 application a site layout for the project that</p> <p>7 potentially improves the environmental performance of</p> <p>8 the project. It has not been adopted by the Corps,</p> <p>9 nor by us, and we will continue to look at ways to</p> <p>10 improve this project, that I can tell you.</p> <p>11 Q Well, let me ask you to turn, then, to EDF</p> <p>12 Exhibit 122.</p> <p>13 A Okay. Yes.</p> <p>14 Q You'll agree with me that this was, as it</p> <p>15 states in the re line, White Stallion Energy Center</p> <p>16 Section 10/404 permit application. Correct?</p> <p>17 A Yes.</p> <p>18 Q And it was submitted by Whitenton Group,</p> <p>19 Inc., on behalf and as the agent of White Stallion</p> <p>20 Energy Corporation. Is that correct?</p> <p>21 A Yes.</p> <p>22 Q Excuse me. White Stallion Energy Center.</p> <p>23 Correct?</p> <p>24 A Yes, that's correct.</p> <p>25 Q I'll ask you to turn to the public notice</p>	<p style="text-align: right;">81</p> <p>1 A I have not personally had those</p> <p>2 conversations.</p> <p>3 Q Representatives of White Stallion have had</p> <p>4 those conversations?</p> <p>5 A Representatives of White Stallion have met</p> <p>6 with the Corps of Engineers, expressed the intent to</p> <p>7 supply this application, exchanged views or -- that's</p> <p>8 incorrect -- listened to the Corps' thinking about</p> <p>9 what their review process would be and filed this</p> <p>10 application in response to those suggestions, as well</p> <p>11 as what are the regulations involved.</p> <p>12 Q Well, in fact, the Corps has issued public</p> <p>13 notice of your application. Isn't that right?</p> <p>14 A That's correct. Yes.</p> <p>15 Q So it's more than discussions. Right?</p> <p>16 It's an application for which public</p> <p>17 notice has been issued. Correct?</p> <p>18 A Yes. We absolutely filed an application, and</p> <p>19 public notice has been issued.</p> <p>20 Q And are you aware that EPA has filed</p> <p>21 public -- has filed comments on this application?</p> <p>22 A I'm aware of that, yes.</p> <p>23 Q Are you aware that other state and federal</p> <p>24 agencies have filed comments on this application?</p> <p>25 A I am aware of that, yes.</p>

<p style="text-align: right;">82</p> <p>1 Q And this application, like the wastewater 2 discharge application, proposes a site plan that's 3 different than the site plan proposed in your air 4 quality application. Correct? 5 A For consideration, yes. 6 Q I'll ask you to turn to -- it's plate -- or 7 Figure 4 of 15 in EDF Exhibit 122. That's Bates 8 labeled EDF 019753. 9 A Yes. 10 Q And do you see the location that's proposed 11 there for barge unloading? 12 A Yes. 13 Q Is that the same location as proposed in the 14 air quality permit application? 15 A Based on my review this morning, apparently 16 not. 17 Q And you'll agree with me that barge loading 18 facilities and the conveyors and drop points 19 associated with those are sources of particulate 20 emissions? Is that correct? 21 A I'm aware of that, yes. 22 Q As president and CEO of White Stallion, where 23 will the barge unloading facility be located? 24 A It's currently contemplated and approved to 25 be located in the location where it is represented in</p>	<p style="text-align: right;">84</p> <p>1 permit application prior to today? 2 A No. That's not what I said. 3 Q Could you restate your answer then? 4 MR. GROTEM: To what question? 5 Q (BY MR. WEBER) Well, let me ask. When did 6 you decide that -- do you plan to amend your air 7 quality permit application that we're here today for? 8 A I have no such intention sitting here today. 9 Q Well, I think you've testified that you are 10 considering amending your Section 404 permit 11 application. Is that right? 12 A We're working on finalization of our -- of 13 the process that would result in a 404 permit. If 14 that requires amendment in order to be compliant with 15 our obligations, we will do -- make such an amendment. 16 I'm simply telling you that I have no 17 authority to unilaterally amend that permit 18 application. That's subject to the governance 19 provisions of the White Stallion Energy project, and I 20 assure you -- and I assure you -- that we will act 21 fully and compliant with what our requirements are 22 should the air permit application being heard in this 23 process be granted. 24 Q I believe my question was, when did you first 25 consider the possibility of amending your 404 permit</p>
<p style="text-align: right;">83</p> <p>1 the application for ESD permit for which we're hearing 2 today. 3 Q So it's your testimony here that you intend 4 to amend the Section 404 permit on file with the Army 5 Corps of Engineers. Is that right? 6 A We will consider making such an amendment. 7 That is a process in which we're engaged today. 8 Q And was that process initiated today as a 9 result of EDF's motion? 10 A Was -- what process? 11 Q The process of reconsidering the application 12 on file, both with the Army Corps of Engineers Section 13 404 wetlands or dredge and fill permit, is that as a 14 result of our motion filed today? 15 A No. 16 Q Okay. When did that reconsideration begin? 17 A We would have filed for amendment of this 18 process, had there been conclusions that it was 19 necessary to amend. The process of considering 20 potential wetlands mitigation in addition to that 21 commenced with our preparation of our 404 permit 22 application. 23 Q I want to make sure I understand your answer. 24 Is your answer, then, that you had 25 previously contemplated amending your air quality</p>	<p style="text-align: right;">85</p> <p>1 application? 2 A Well, you know, we've considered optimizing 3 the 404 permit application by means of its impacts at 4 least since the public comment period, and we began to 5 look very carefully at the comments. We're working 6 very hard to respond to them with -- you know, the 7 Corps has provided them to us, and our next step in 8 that process is to respond, and that may include 9 amendments to the application. 10 Q Is it White Stallion's intention to alter the 11 site plan submitted on behalf of White Stallion as 12 part of the Section 404 dredge permit application? 13 A We may do that. We're considering doing 14 that. 15 Q Are you considering moving the barge 16 unloading facility? 17 MR. GROTEM: Moving it relative to what? 18 Q (BY MR. WEBER) Moving it relative to where 19 it's represented in your air quality permit 20 application. 21 A No, I have no such intention to do that. 22 We'll consider that, only under the guidelines of 23 the -- you know, the air permit that -- the final air 24 permit, but we have no commitment to change the barge 25 location.</p>

<p style="text-align: right;">86</p> <p>1 Q Do you plan to move the barge location as 2 represented in the 404 application? 3 A That's a possibility, yea. 4 Q Have you informed the Army Corps of Engineers 5 about that possibility? 6 A No. 7 Q The decision to reconfigure the site plan as 8 represented in the air quality permit application and 9 make changes to that site plan as represented in your 10 404 application was a result of concerns regarding 11 impacts to and mitigation of forested wetlands 12 primarily. Correct? 13 A Forested wetlands, I guess, is a major 14 consideration. I'm not aware of all the 15 considerations. 16 Q But you'll agree with me, then, that 17 subsequent to filing your air quality permit 18 application, White Stallion determined that they ought 19 to mitigate impacts to wetlands, specifically forested 20 wetlands, and thereby submitted a different site plan 21 to the Army Corps of Engineers. Correct? 22 A We have considered, but the fact is that, you 23 know, we've submitted a site plan to the Army Corps of 24 Engineers that is a prospective means to mitigate 25 certain of the wetland impacts.</p>	<p style="text-align: right;">88</p> <p>1 southeast corner of your property? Is that right? 2 A For consideration, yes. 3 Q Well, you've submitted it in an application 4 to the Army Corps of Engineers. Correct? 5 A That is correct. 6 Q You made a representation that as the 7 president and CEO of White Stallion you stand by. 8 Correct? 9 A It sounds like you're suggesting that I have 10 committed to a site plan that moves the material 11 handling for mitigation of forested wetlands, and I 12 have made no such commitment. 13 Q But you at least made that representation 14 through the site plan to the Army Corps of Engineers. 15 Correct? 16 A We made representation that that is among the 17 options for mitigation. 18 Q Well, you'll agree with me, will you not, 19 that the proposed site plan that was submitted to the 20 air permitting division as part of your air quality 21 application presents a reasonable alternative to the 22 site proposed to the Army Corps of Engineers? 23 A The Army Corps of Engineers permit 24 application was not contemplated at the time of 25 creation of the site layout for the air permit</p>
<p style="text-align: right;">87</p> <p>1 Q Sir, you've done more than consider, haven't 2 you? 3 Can you turn to Figure 3 of 15 on EDF 4 Exhibit 122, EDF Bates labeled 019754? 5 A Yes, I have it in front of me. 6 Q The areas cross-hatched in orange, those are 7 forested wetlands. Correct? 8 A I believe that's the case. 9 Q Do you see in the legend where it says 10 "forested wetlands"? If you turn it landscape, it 11 would be in your lower right-hand corner. 12 A Yes. 13 Q Is the orange cross-hatch area -- are those 14 forested wetlands? 15 A Yes. 16 Q Isn't it true that White Stallion has moved 17 the material handling portion of the proposed plant 18 northward in order to avoid forested wetlands along 19 the southern boundary -- excuse me -- the southwestern 20 boundary of your property? 21 A Would you please ask it again? 22 Q You bet. It's true, is it not, that White 23 Stallion has moved the material handling portion of 24 its proposed source northward in order to avoid 25 impacts to forested wetlands located on the south and</p>	<p style="text-align: right;">89</p> <p>1 application that took place months before. It is the 2 only approved design by the development committee of 3 this project. 4 Q Which one is? I'm sorry. 5 A The one that is in the air application. 6 Q So are you saying that the application 7 submitted to the Army Corps of Engineers has not been 8 approved by White Stallion management? 9 A It has not been adopted as the final design 10 of this project. That's correct. 11 Q Do you recall on what date White Stallion's 12 management team or board adopted as the final plan the 13 site plan submitted as part of the air quality permit 14 application? 15 A I don't remember the precise date, sometime 16 before the application was submitted. 17 Q In 2008? 18 A Yes. 19 Q And when you say "the application," you mean 20 the air quality permit application? 21 A Correct. 22 Q So it was approved by White Stallion's 23 management committee or board. Is that right? 24 Is it the board that approves it? 25 A Development committee is the formal name of</p>

<p style="text-align: right;">90</p> <p>1 It, yes.</p> <p>2 Q So it was approved by the committee?</p> <p>3 A Yes.</p> <p>4 Q But then you subsequently certified to the</p> <p>5 air -- excuse me -- the wastewater -- the water</p> <p>6 quality division of the TCEQ a site plan that had not</p> <p>7 been approved by the committee. Is that correct?</p> <p>8 A That is correct. The general layout of this</p> <p>9 project was approved once. It was not actually</p> <p>10 approved in the context of the air application. It</p> <p>11 was used for that purpose subsequent. There has never</p> <p>12 been an adoption of a different one, ever.</p> <p>13 Q Was Randy Bird not acting on behalf of White</p> <p>14 Stallion Energy Center?</p> <p>15 A He was acting on behalf of White Stallion</p> <p>16 Energy Center.</p> <p>17 Q And are your consultants acting on behalf of</p> <p>18 White Stallion Energy Center?</p> <p>19 A Yes, they are.</p> <p>20 Q You take certifications to the TCEQ</p> <p>21 seriously?</p> <p>22 A Yes, sir.</p> <p>23 Q You would agree that the site plan submitted</p> <p>24 to the Army Corps of Engineers in 2009, that you may</p> <p>25 now alter, that that was a practicable alternative to</p>	<p style="text-align: right;">92</p> <p>1 of things in this process. He is the -- provides</p> <p>2 oversight and advice to the development committaa</p> <p>3 related to technical matters. He is an engineer by</p> <p>4 training. He has advised and conducted activity</p> <p>5 related to permit application preparation. He also</p> <p>6 has been responsible for working with the public in</p> <p>7 Bay City, and he has a variety of other</p> <p>8 responsibilities.</p> <p>9 Q How does his role compare to your role, thus</p> <p>10 far, in this process?</p> <p>11 A Well, I have oversight responsibility for the</p> <p>12 entirety of the development of this project. That's</p> <p>13 the permitting process, but it involves a variety of</p> <p>14 other large activities, including the procurement of</p> <p>15 construction -- a construction construct for the</p> <p>16 project, marketing electricity, procurement of fuel, a</p> <p>17 variety of other things that are all major activities.</p> <p>18 I have responsibility broadly for all of those.</p> <p>19 Q So your responsibility is broader than</p> <p>20 Mr. Bird's responsibility. Is that correct?</p> <p>21 A Generally, that's a fair statement.</p> <p>22 Q Does Mr. Bird have a role in Sky Energy?</p> <p>23 A Yes. He has the same title in Sky Energy,</p> <p>24 and Sky Energy is a project developer. So essentially</p> <p>25 the role that Randy plays on White Stallion is very</p>
<p style="text-align: right;">91</p> <p>1 the site plan submitted to the air quality division in</p> <p>2 September 2008. Is that right?</p> <p>3 A I think that's a fair statement.</p> <p>4 Q Thank you, Mr. Rotondi.</p> <p>5 MR. WEBER: I'll pass the witness.</p> <p>6 JUDGE QUALTROUGH: Sierra Club?</p> <p>7 CROSS-EXAMINATION</p> <p>8 BY MS. MANN;</p> <p>9 Q Good morning, Mr. Rotondi.</p> <p>10 A Hello.</p> <p>11 Q My name is Christina Mann. I'm with the</p> <p>12 Sierra Club and the No Coal Coalition.</p> <p>13 You testified earlier that Randy Bird is</p> <p>14 the chief operating officer of White Stallion Energy</p> <p>15 Center. Is that correct?</p> <p>16 A Yes.</p> <p>17 Q And you are the CEO and president of White</p> <p>18 Stallion Energy?</p> <p>19 A That's correct.</p> <p>20 Q What has Mr. Bird's role been in the WSEC</p> <p>21 development process?</p> <p>22 A You mean White Stallion?</p> <p>23 Q Yeah, White Stallion Energy Center's</p> <p>24 development process.</p> <p>25 A Well, Mr. Bird is responsible for a variety</p>	<p style="text-align: right;">93</p> <p>1 nearly the identical role he plays as a member of the</p> <p>2 Sky Energy development team.</p> <p>3 Q Can you please explain the business</p> <p>4 relationship between White Stallion, Sky Energy and</p> <p>5 Spark Energy?</p> <p>6 A Yes. Spark Energy is the retail electric</p> <p>7 brand name associated with a private investment group</p> <p>8 based in the Houston area. Spark Energy has a company</p> <p>9 that shares the same ownership as the partner in</p> <p>10 development of Sky Energy or -- excuse me -- of White</p> <p>11 Stallion Energy. So essentially Spark Energy is the</p> <p>12 group that is the partner in development of this</p> <p>13 project.</p> <p>14 Q Are they a financial partner only or are they</p> <p>15 providing technical and development assistance?</p> <p>16 A They provide a variety of assistance, in</p> <p>17 addition to financing.</p> <p>18 Q Are they the only financial partner in</p> <p>19 this -- to White Stallion Energy or Sky Energy in</p> <p>20 development of this particular project?</p> <p>21 A Yeah. They're a related company -- the</p> <p>22 company that is related to Spark -- I'm saying this</p> <p>23 because they're actually not joint -- okay.</p> <p>24 Spark Energy and a company called Maria</p> <p>25 are two entities that are owned by the same</p>

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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. HANN: 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

<p style="text-align: right;">98</p> <p>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</p>	<p style="text-align: right;">100</p> <p>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.</p>
<p style="text-align: right;">99</p> <p>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</p>	<p style="text-align: right;">101</p> <p>1 Q (BY MS. HAIN) 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</p>

<p style="text-align: right;">102</p> <p>1 Energy Center itself will have most of the operating 2 employees.</p> <p>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.</p> <p>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.</p> <p>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?</p> <p>21 Is the permit going to remain in White 22 Stallion Energy Center's name, no matter who is 23 operating the facility?</p> <p>24 A Yes.</p> <p>25 Q Who will own the equipment in the -- in that</p>	<p style="text-align: right;">104</p> <p>1 would say that the landowner, however, and the site 2 plan are a matter of public record.</p> <p>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?</p> <p>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.</p> <p>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?</p> <p>22 A You mean in terms of individual people?</p> <p>23 Q Who in terms of individual people or entity.</p> <p>24 A Yeah. We are in the process to --</p> <p>25 Q You're in the process of making that</p>
<p style="text-align: right;">103</p> <p>1 actual tangible facilities at White Stallion Energy 2 Center?</p> <p>3 A White Stallion Energy Center will.</p> <p>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?</p> <p>8 A As -- under a contract that would be approved 9 by the ownership and lending structure of the project.</p> <p>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?</p> <p>13 A We hold an option to purchase the land.</p> <p>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?</p> <p>17 A I'm sorry?</p> <p>18 Q Who is the option to purchase with?</p> <p>19 A The option to purchase was taken by a sister 20 company of Harris and assigned directly, via a legal 21 instrument, to White Stallion Energy Center, so White 22 Stallion Energy Center holds the option.</p> <p>23 Q Who do they hold the option to buy the land 24 from?</p> <p>25 A That's a confidential business -- I guess I</p>	<p style="text-align: right;">105</p> <p>1 decision?</p> <p>2 A Yeah. That decision has not been finalized.</p> <p>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?</p> <p>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.</p> <p>10 MS. MANN: I'm doing to object to that 11 as nonresponsive. You can always follow up with your 12 counsel.</p> <p>13 JUDGE QUALTROUGH: I'm going to overrule 14 your objection. Go ahead with your questioning, 15 please.</p> <p>16 MS. MANN: Okay.</p> <p>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?</p> <p>21 A My personal signature?</p> <p>22 Q Correct.</p> <p>23 A You know, I'm not sure that I recall that. 24 It's not impossible though.</p> <p>25 Q Do you recall it specifically for this air</p>

<p style="text-align: right;">106</p> <p>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</p>	<p style="text-align: right;">108</p> <p>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</p>
<p style="text-align: right;">107</p> <p>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</p>	<p style="text-align: right;">109</p> <p>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</p>

<p style="text-align: right;">110</p> <p>1 and stored at somewhere on the 1,200-acre site?</p> <p>2 A Well, I'm -- as you know from my resume that</p> <p>3 I provided you, I'm not our project engineer. I have</p> <p>4 a general understanding. We are building -- we are</p> <p>5 proposing to build, I should say, an unloading</p> <p>6 facility to take pet coke from barges. There will be</p> <p>7 a mechanical means of accomplishing that. It will</p> <p>8 then be transferred via -- as I understand it,</p> <p>9 conveyed to storage areas.</p> <p>10 Q And is that the extent that you understand</p> <p>11 what the storage areas would be like?</p> <p>12 A Yes. I mean, I'm not the designer of them.</p> <p>13 I have a general understanding of what their purpose</p> <p>14 is and what they do.</p> <p>15 Q Okay. Can you explain, to the best of your</p> <p>16 understanding, how coal will be transported to White</p> <p>17 Stallion?</p> <p>18 A Again, the two primary modes of transport of</p> <p>19 coal would be barge transport on the inland waterway</p> <p>20 system, and the other would be mainline railroads,</p> <p>21 both of which have capability to deliver coal onto</p> <p>22 this site.</p> <p>23 Q Okay. And are the retail -- do the railroads</p> <p>24 exist today?</p> <p>25 Do the rail lines that White Stallion</p>	<p style="text-align: right;">112</p> <p>1 Q But as far as your understanding of what</p> <p>2 White Stallion would be allowed to burn, 100 percent</p> <p>3 coke versus zero percent coal or any range in between</p> <p>4 there, do you have an understanding if there are any</p> <p>5 restrictions for White Stallion on what they're</p> <p>6 allowed -- what percentages of pet coke versus coal</p> <p>7 they're allowed to burn?</p> <p>8 A Do you mean under the --</p> <p>9 Q Under -- either in the representations that</p> <p>10 White Stallion has made in the application or in the</p> <p>11 draft permit that's under consideration.</p> <p>12 A Yeah. I think the answer to your question is</p> <p>13 yes, if I understand it.</p> <p>14 Q So I want to make sure we're on the same</p> <p>15 page. You believe that White Stallion is restricted</p> <p>16 in how much pet coke versus coal it is allowed to</p> <p>17 burn?</p> <p>18 A No. I'm glad you clarified. I do not</p> <p>19 believe it is restricted.</p> <p>20 Q So it's your understanding that the permit</p> <p>21 would allow 100 percent pet coke or 100 percent coal</p> <p>22 to be burned at any one time?</p> <p>23 A That is my understanding.</p> <p>24 Q Earlier you mentioned Illinois coal, and then</p> <p>25 I thought I heard you mention Kentucky coal in</p>
<p style="text-align: right;">111</p> <p>1 might use exist today?</p> <p>2 A Yes.</p> <p>3 Q And the same question about the coal. Do you</p> <p>4 know how it will be transferred from either the barge</p> <p>5 or the rail line to its storage facility?</p> <p>6 A My answer is really very much the same. You</p> <p>7 know, the rail, it will be delivered via rail, will be</p> <p>8 unloaded and transported.</p> <p>9 Q Will the pet coke and the coal be segregated</p> <p>10 while it's in storage?</p> <p>11 A That's my understanding.</p> <p>12 Q Do you believe White Stallion Energy Center</p> <p>13 is restricted in any way in how much pet coke versus</p> <p>14 coal it chooses to burn in the CFBs?</p> <p>15 A Well, as a practical matter, there are</p> <p>16 limitations of use of both. I mean, we would -- for</p> <p>17 example, it's impossible -- it's likely impossible,</p> <p>18 from what we understand, to procure coal from Illinois</p> <p>19 or Kentucky to be delivered one trainload order at a</p> <p>20 time.</p> <p>21 There would have to be some baseload</p> <p>22 commitment of capacity over time in order for the</p> <p>23 railroads to be prepared to participate in deliveries,</p> <p>24 and so that's a limitation. I would assume the same</p> <p>25 situation exists for pet coke.</p>	<p style="text-align: right;">113</p> <p>1 response to one of your earlier answers. Do you</p> <p>2 recall that?</p> <p>3 A Yes, I recall that.</p> <p>4 Q Is White Stallion planning on procuring and</p> <p>5 burning Kentucky coal?</p> <p>6 A No, not necessarily. The Illinois Basin is</p> <p>7 technically defined as geologic formations that</p> <p>8 actually are -- exist in several states; Illinois</p> <p>9 Kentucky, Indiana all among them.</p> <p>10 Q So when -- we're still talking about the same</p> <p>11 kind of coal that's been represented in the</p> <p>12 application, a bituminous?</p> <p>13 A Yes.</p> <p>14 Q Do you understand that portions of the draft</p> <p>15 permit have different emission limitations depending</p> <p>16 on whether or not coal or pet coke is being burned?</p> <p>17 A Yes, I do understand that.</p> <p>18 Q You understand that. How will White Stallion</p> <p>19 Energy Center identify, record and report the relative</p> <p>20 ratios of pet coke to coal being burned at any one</p> <p>21 time so that the regulators and the public can be sure</p> <p>22 that the emission limitations are being met for the</p> <p>23 fuel that's being burned?</p> <p>24 A Well, I don't know exactly how those reports</p> <p>25 are to be delivered. I can tell you that we will</p>

<p style="text-align: right;">114</p> <p>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.</p>	<p style="text-align: right;">116</p> <p>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.</p>
<p>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</p>	<p>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.</p>
<p style="text-align: right;">115</p> <p>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,</p>	<p style="text-align: right;">117</p> <p>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 QUALTROUGH: 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</p>

<p style="text-align: right;">118</p> <p>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</p>	<p style="text-align: right;">120</p> <p>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?</p>
<p style="text-align: right;">119</p> <p>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</p>	<p style="text-align: right;">121</p> <p>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</p>

<p style="text-align: right;">122</p> <p>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?</p>	<p style="text-align: right;">124</p> <p>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.</p>
<p>20 MR. GROEN: 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</p>	<p>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?</p>
<p style="text-align: right;">123</p> <p>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 acra-foot 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</p>	<p style="text-align: right;">125</p> <p>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 --</p>

<p style="text-align: right;">126</p> <p>1 A Or myself.</p> <p>2 Q -- individually.</p> <p>3 A I was aware that the team, including</p> <p>4 Mr. Bird, were evaluating alternatives to address the</p> <p>5 question of mitigation of all impacts. I was not</p> <p>6 aware that any of them impacted air emissions.</p> <p>7 It's not my understanding necessarily</p> <p>8 that any of them do, and for that reason, you know,</p> <p>9 we're committed to live by the design of this project</p> <p>10 submitted in the application for this permit.</p> <p>11 Q But did I understand your testimony that if</p> <p>12 the facility was constructed using the site plan for</p> <p>13 one of the -- that was submitted on behalf of White</p> <p>14 Stallion Energy for one of the other permit</p> <p>15 applications that it's your understanding that air</p> <p>16 emissions are not going to be changed?</p> <p>17 A I can't -- based on everything I know at this</p> <p>18 moment, I can't verify that. I will say that, you</p> <p>19 know, if it is necessary to amend -- I mean, there's</p> <p>20 going to be one design of this plant at the end of the</p> <p>21 day. And my assessment at this moment is that it is</p> <p>22 that that has been submitted in this application. So</p> <p>23 if we have to alter any of the other process to comply</p> <p>24 with that, then that's what will happen.</p> <p>25 Q Why -- if it's your understanding that the</p>	<p style="text-align: right;">129</p> <p>1 Energy Center's representations in that application.</p> <p>2 Correct?</p> <p>3 A You know, I can't tell you what they relied</p> <p>4 on. Certainly, the application was available to them.</p> <p>5 Q But nowhere in the application does it -- is</p> <p>6 there a document or statement that suggests that there</p> <p>7 is a different site plan on a different application</p> <p>8 for this same facility. Is that correct?</p> <p>9 A Yeah. I don't know of any statement to that</p> <p>10 effect.</p> <p>11 Q Okay.</p> <p>12 MS. MANN: I've no further questions,</p> <p>13 and I pass the witness. Thank you, Mr. Rotondi.</p> <p>14 JUDGE QUALTROUGH: All right.</p> <p>15 Mr. Humphrey, how much do you have for cross?</p> <p>16 MR. HUMPHREY: Five minutes.</p> <p>17 JUDGE QUALTROUGH: And how much do you</p> <p>18 have for redirect? They went first. Yeah, they</p> <p>19 passed.</p> <p>20 MR. GROTEN: I have five questions. We</p> <p>21 can do this in short order, Your Honor.</p> <p>22 JUDGE QUALTROUGH: Okay. So let's go</p> <p>23 ahead and do this witness before lunch -- finish up,</p> <p>24 Go ahead, Mr. Humphrey.</p> <p>25 MR. HUMPHREY: Thank you, Your Honor.</p>
<p style="text-align: right;">127</p> <p>1 one submitted on behalf of White Stallion Energy</p> <p>2 Center in this air application is the site plan, why</p> <p>3 would Mr. Bird submit a site plan subsequent to that</p> <p>4 that was different on different applications?</p> <p>5 A I only think that he's, and my team are,</p> <p>6 today continuing to explore every avenue to reduce</p> <p>7 impacts of this project.</p> <p>8 Q Do you have any opinion one way or the other</p> <p>9 whether or not the 404 -- I'm sorry -- whether or not</p> <p>10 the Army Corps of Engineers -- strike that.</p> <p>11 Why didn't Mr. Bird just submit the site</p> <p>12 plan from the air permit application to the Army Corps</p> <p>13 of Engineers?</p> <p>14 A The fact is I don't exactly know the answer</p> <p>15 to that.</p> <p>16 Q Same question for the wastewater permit. Why</p> <p>17 didn't he just submit the site plan --</p> <p>18 A Yeah. Same answer.</p> <p>19 Q You testified earlier that EPA had submitted</p> <p>20 comments in response to White Stallion's 404</p> <p>21 application. Is that correct?</p> <p>22 A It is my -- yes, I'm aware they have</p> <p>23 submitted comments.</p> <p>24 Q And EPA -- in commenting on the 404</p> <p>25 application, EPA must have relied on White Stallion</p>	<p style="text-align: right;">129</p> <p style="text-align: center;">CROSS-EXAMINATION</p> <p>1 BY MR. HUMPHREY:</p> <p>2 Q I have a few follow-up questions about the</p> <p>3 site plans.</p> <p>4 Am I correct that you submitted site</p> <p>5 plans for this application, the water quality</p> <p>6 application and the 404 application?</p> <p>7 A Are you asking me if we did that?</p> <p>8 Q Yes.</p> <p>9 A I believe so, yes.</p> <p>10 Q Are the site plans for the water quality</p> <p>11 application and the 404 application the same?</p> <p>12 A I don't know the answer to that.</p> <p>13 Q Which was the one that was submitted latest</p> <p>14 in time of the three?</p> <p>15 A Based on these exhibits in front of me,</p> <p>16 the -- give me a second to look at them.</p> <p>17 (Brief pause)</p> <p>18 A It looks to me like the first of the two was</p> <p>19 the water discharge application.</p> <p>20 Q (BY MR. HUMPHREY) So the 404 one was the</p> <p>21 last one of the three?</p> <p>22 A Yes, I would agree.</p> <p>23 Q And I think that you said on</p> <p>24 cross-examination that there were alterations to the</p>

<p style="text-align: right;">130</p> <p>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</p>	<p style="text-align: right;">132</p> <p>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</p>
<p style="text-align: right;">131</p> <p>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.</p>	<p style="text-align: right;">133</p> <p>1 that's ultimately going to be the site plan that will 2 prevail? 3 MR. GROVEN: 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</p>

<p style="text-align: right;">134</p> <p>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</p>	<p style="text-align: right;">136</p> <p>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</p>
<p style="text-align: right;">135</p> <p>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</p>	<p style="text-align: right;">137</p> <p>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</p>

<p style="text-align: right;">138</p> <p>1 was more for navigational questions, but that we are 2 fully prepared to not change that.</p> <p>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.</p> <p>10 Q And if it is not a reduction, then -- 11 A We're under no obligation.</p> <p>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.</p> <p>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.</p> <p>22 JUDGE QUALTROUGH: Mr. Groten, when I 23 said we would finish before lunch, I completely forgot 24 about your recess. So can we just take a break now 25 and come back?</p>	<p style="text-align: right;">140</p> <p>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.) 6 7 8 9 10 11 12 13 14 15 16 17 18 19</p>
<p style="text-align: right;">139</p> <p>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</p>	<p style="text-align: right;">141</p> <p style="text-align: center;">AFTERNOON SESSION WEDNESDAY, FEBRUARY 10, 2010 (1:47 p.m.)</p> <p>JUDGE QUALTROUGH: All right. We are back on the record. It is 1:47. As I recall, Mr. Groten, you were going to finish up, or had you finished? MR. GROTEN: I'm about to. JUDGE QUALTROUGH: Okay. MR. GROTEN: Thank you for your testimony today, Mr. Rotondi. Pass the witness. JUDGE QUALTROUGH: All right. ED? MR. HARRISON: We pass the witness. JUDGE QUALTROUGH: EDF? MR. WEBER: Thank you, Your Honor. PRESENTATION ON BEHALF OF THE APPLICANT (CONTINUED) FRANK ROTONDI, having been previously sworn, continued to testify as follows: REGROSS-EXAMINATION BY MR. WEBER: Q On redirect, Mr. Rotondi, you testified that the site plans that you submitted to the water quality</p>

<p style="text-align: right;">142</p> <p>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 How 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.</p>	<p style="text-align: right;">144</p> <p>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</p>
<p style="text-align: right;">143</p> <p>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</p>	<p style="text-align: right;">145</p> <p>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.</p>

<p style="text-align: right;">146</p> <p>1 Q With all due respect, Mr. Rotondi, it sounds 2 like playing games here. 3 How is it possible, how do you justify 4 certifying different site plans to two different 5 agencies and testify that they are both accurate when 6 they are facially different? 7 MR. GROVEN: Objection, asked and 8 answered; repetitive of earlier questioning beyond 9 what I asked him in cross. 10 JUDGE QUALTROUGH: I'll sustain that 11 objection. 12 Q (BY MR. WEBER) Would you turn to EDF Exhibit 13 120, please. 14 A Yes. 15 Q Would you turn to the very last page of that, 16 please. 17 A Yes, I'm there. 18 Q And that is entitled, "Figure 3-3 Material 19 Handling Plot Plan." Is that correct? 20 A Yes. 21 Q And that's White Stallion Exhibit 103, Page 22 18 of 515. Correct? 23 A Yes. 24 Q The labels that are listed in red, do you see 25 those?</p>	<p style="text-align: right;">148</p> <p>1 (Requested portion read) 2 MR. WEBER: I would move to strike -- or 3 I object to everything after the answer "Yes." 4 JUDGE QUALTROUGH: Overruled. 5 Q (BY MR. WEBER) I've handed you a highlighter, 6 and on Figure 3-3, would you highlight for us the 7 emissions points associated with the barge loading and 8 unloading? For instance, CONV1, does that stand for 9 Conveyor 1, do you know? 10 A I don't know. 11 Q You don't know? 12 A I didn't develop this. 13 Q Assume with me that is an emissions point. 14 A Okay. 15 Q If the site plan submitted -- and all these 16 questions I'm about to ask you assume that if a site 17 plan was submitted to the Army Corps of Engineers, is 18 the one that is ultimately constructed, if that's the 19 case, would the emissions point of Conveyor 1 move? 20 A I believe, yes. 21 Q Okay. Could you highlight that for me? 22 What about Barge 1, Barge 2, would they 23 move? 24 A I would presume -- I believe, yes. 25 Q TRSFRI, Transfer 1, would that move?</p>
<p style="text-align: right;">147</p> <p>1 A Yes. 2 Q Those are each designated emissions point. 3 Correct? 4 A I guess that's the case. I mean, I'm not 5 directly familiar with this, but I assume it is. 6 Q If the site plans submitted to the Army Corps 7 of Engineers is the site plan that ultimately gets 8 constructed, would you agree with me that the 9 emissions associated with the barges, or the barge 10 unloading facility as shown on Figures 3-3 would 11 change, the emissions points would move. Is that 12 correct? 13 A Yes. I would point out that the movement of 14 the barge facility had nothing to do with any issue of 15 wetlands mitigation. And so it is perfectly valid in 16 the location as submitted in the air application. 17 MR. WEBER: I'll object as 18 nonresponsive. I'll move to strike that testimony. 19 JUDGE QUALTROUGH: I'm sorry. I was 20 looking, and -- so I didn't follow. But I thought I 21 understood his answer. Do you want to ask the 22 question again, or have it read back? Do you really 23 want a ruling? 24 MR. WEBER: Could you read back the 25 question?</p>	<p style="text-align: right;">149</p> <p>1 A I believe, yes. 2 Q CONV2, would that move? 3 A I believe so. 4 Q Please highlight it as well. 5 CONV3, Conveyor 3, would that move? 6 A I don't know actually. 7 MR. WEBER: Your Honor, may I approach 8 the witness? 9 JUDGE QUALTROUGH: Yes, you may. 10 Q (BY MR. WEBER) Earlier on redirect you were 11 referring to my blowup of EDF Exhibit 123, and you 12 testified, I believe, that the long-term storage piles 13 under the version of the site plan submitted to the 14 Corps were flipped up and moved to the north. 15 Correct? 16 A Yes, that's correct. 17 MR. GROVEN: May I interrupt, while he's 18 having a pause here, to note that any further 19 questioning on this may be misleading, given it 20 appears that the overlay is misaligned with the 21 underlying graph. 22 MR. WEBER: I can try to mess with that, 23 or we can look at Exhibit 123 if you like, and I can 24 just point to this for purposes of ease. That might 25 be an easier way of doing it.</p>

<p style="text-align: right;">150</p> <p>1 JUDGE QUALTROUGH: Okay. So we're on 2 123?</p> <p>3 MR. WEBER: Yes, Your Honor.</p> <p>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?</p> <p>10 A Yes.</p> <p>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.</p> <p>14 A Uh-huh.</p> <p>15 Q The location of the barge unloading facility 16 that's further northwest than what's been proposed 17 today. Is that correct?</p> <p>18 A Yes.</p> <p>19 Q Do you see that railcar dumper building?</p> <p>20 A Yes.</p> <p>21 Q And in that depiction -- which is marked as 22 EDF Bates label 018944. Correct?</p> <p>23 A Yes.</p> <p>24 Q Do you see a conveyor coming off of that 25 heading from west to east? Correct?</p>	<p style="text-align: right;">151</p> <p>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?</p> <p>10 A That is correct, yes. 11 Q Okay. As is the conveyor leading off of 12 there. Correct?</p> <p>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?</p> <p>17 A Yes. 18 Q Okay. So would that emissions point move? 19 A Yes. 20 Q What about the emissions labeled as 21 DC-RAIL-UL, and beneath that it says, RAILFUG, rail 22 fugitive. Would that move?</p> <p>23 A Yes. 24 JUDGE QUALTROUGH: I don't know where 25 that is.</p>
<p style="text-align: right;">152</p> <p>1 MR. WEBER: Back on 3.3 -- 3-3. Pardon 2 me, Your Honor.</p> <p>3 JUDGE QUALTROUGH: Okay. Hold on one 4 moment.</p> <p>5 Q (BY MR. WEBER) Could you highlight that one 6 as well?</p> <p>7 A I did, yes. 8 Q Thank you.</p> <p>9 JUDGE QUALTROUGH: I'm sorry. What was 10 that number again?</p> <p>11 MR. WEBER: Yes, ma'am. That was 12 DC-RAIL-UL, RAILFUG.</p> <p>13 JUDGE QUALTROUGH: Okay.</p> <p>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?</p> <p>19 A It appears, yes. 20 Q Okay. Could you highlight that? 21 Likewise with TRSFR2 and FR3. Correct?</p> <p>22 A Yes. 23 Q Highlight that please. 24 Same with CONV4 and CONV5. Correct?</p> <p>25 A Yes.</p>	<p style="text-align: right;">153</p> <p>1 Q Highlight that please. 2 Same with the two long-term storage 3 piles both labeled as SP1. Correct?</p> <p>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?</p> <p>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?</p> <p>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?</p> <p>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?</p>

<p style="text-align: right;">154</p> <p>1 A Yes.</p> <p>2 Q Please highlight it.</p> <p>3 And CONV7?</p> <p>4 A Yes.</p> <p>5 Q Thank you.</p> <p>6 MR. WEBER: Pass the witness, Your</p> <p>7 Honor.</p> <p>8 JUDGE QUALTROUGH: Sierra Club?</p> <p>9 MS. MANN: No questions. Pass the</p> <p>10 witness.</p> <p>11 JUDGE QUALTROUGH: OPEC?</p> <p>12 MR. HUMPHREY: I have no questions, Your</p> <p>13 Honor.</p> <p>14 JUDGE QUALTROUGH: All right. Thank you</p> <p>15 very much.</p> <p>16 MR. WEBER: Your Honor, may I approach</p> <p>17 the board?</p> <p>18 JUDGE QUALTROUGH: Oh sure.</p> <p>19 MR. WEBER: Thank you.</p> <p>20 MR. LEE: Your Honor, we have one bit of</p> <p>21 housekeeping from earlier this morning, which involved</p> <p>22 IGCC sentences in our application.</p> <p>23 JUDGE QUALTROUGH: Right.</p> <p>24 MR. LEE: We have replacement pages that</p> <p>25 show what we think the strike throughs should be.</p>	<p style="text-align: right;">156</p> <p>1 that was excluded from the record.</p> <p>2 MS. MANSURI: Okay. And for the record,</p> <p>3 I would object to the ALJ's refusal to state a basis</p> <p>4 for the denial, the request to take a commission.</p> <p>5 JUDGE QUALTROUGH: Okay.</p> <p>6 MS. MANSURI: Thank you.</p> <p>7 JUDGE QUALTROUGH: And we'll leave for</p> <p>8 tomorrow morning the -- the revisions to the copies</p> <p>9 after you get a chance to look at them.</p> <p>10 MS. MANSURI: Thank you.</p> <p>11 JUDGE QUALTROUGH: All right. Anything</p> <p>12 else?</p> <p>13 MR. GROTEN: We have another witness.</p> <p>14 JUDGE QUALTROUGH: Another witness.</p> <p>15 MR. GROTEN: All right. Mr. Disorbo.</p> <p>16 JUDGE QUALTROUGH: Mr. Disorbo, can I</p> <p>17 get you to raise your right hand please.</p> <p>18 (Witness sworn)</p> <p>19 JUDGE QUALTROUGH: If you could please</p> <p>20 state your name for the record.</p> <p>21 WITNESS DISORBO: My name is Sharon</p> <p>22 Disorbo.</p> <p>23 JUDGE QUALTROUGH: All right. Go ahead,</p> <p>24 Mr. Groten.</p> <p>25</p>
<p style="text-align: right;">155</p> <p>1 I'll try to distribute those, and if we all agree,</p> <p>2 then we'll change them out in the record copy.</p> <p>3 JUDGE QUALTROUGH: Okay. Have you</p> <p>4 distributed these?</p> <p>5 MR. LEE: I have not. I'm about to</p> <p>6 right now.</p> <p>7 JUDGE QUALTROUGH: Okay. Do you want a</p> <p>8 chance to look at those?</p> <p>9 MS. MANSURI: Yes, I would like a few</p> <p>10 minutes.</p> <p>11 JUDGE QUALTROUGH: All right. Look it</p> <p>12 over. We'll talk about it at the end or tomorrow</p> <p>13 morning, if you need more time.</p> <p>14 MS. MANSURI: There may be one point of</p> <p>15 contention. So perhaps if we could bring it --</p> <p>16 resolve it first thing tomorrow morning.</p> <p>17 JUDGE QUALTROUGH: That's fine.</p> <p>18 MS. MANSURI: And also for housekeeping,</p> <p>19 to give a ruling on the record from Your Honors,</p> <p>20 regarding both the Request for Commission and IGCC --</p> <p>21 JUDGE QUALTROUGH: Okay. Your Request</p> <p>22 for Clarification on your Commission, we're denying</p> <p>23 your request. The record stands as it is now.</p> <p>24 And what was the second one? So the</p> <p>25 IGCC that was objected to, and it was sustained, and</p>	<p style="text-align: right;">157</p> <p>1 SHARON DISORBO,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 DIRECT EXAMINATION</p> <p>4 BY MR. GROTEN:</p> <p>5 Q Mr. Disorbo, I'm wondering if, in that stack</p> <p>6 of phone books in front of you, you can find the</p> <p>7 one -- that is -- it contains White Stallion Exhibit</p> <p>8 Nos. 100 through 121. It may be Volume 1.</p> <p>9 A I've got it.</p> <p>10 Q Do you recognize what's been marked as White</p> <p>11 Stallion Exhibits 100 to 121? Can you generally</p> <p>12 characterize what they are?</p> <p>13 A Yes. It looks like my prefiled testimony and</p> <p>14 exhibits.</p> <p>15 Q And can you specifically identify Exhibit --</p> <p>16 White Stallion Exhibit 100?</p> <p>17 A Exhibit 100 is my direct testimony in the</p> <p>18 case.</p> <p>19 Q As submitted by White Stallion in roughly</p> <p>20 August of 2009?</p> <p>21 A Correct.</p> <p>22 Q Have you reviewed your testimony since it was</p> <p>23 originally submitted?</p> <p>24 A I have.</p> <p>25 Q As a result of that review, have you</p>

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

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 ("PM₁₀"). The short-term PSD increment standard is 30 micrograms per cubic meter ("µg/m³"). 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 µg/m³ of exceeding the 24-hour PM₁₀ 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 PM₁₀.

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 PM₁₀ 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

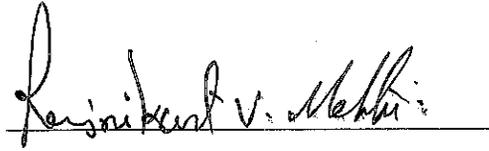
potential emissions impacts associated with the proposed plant.

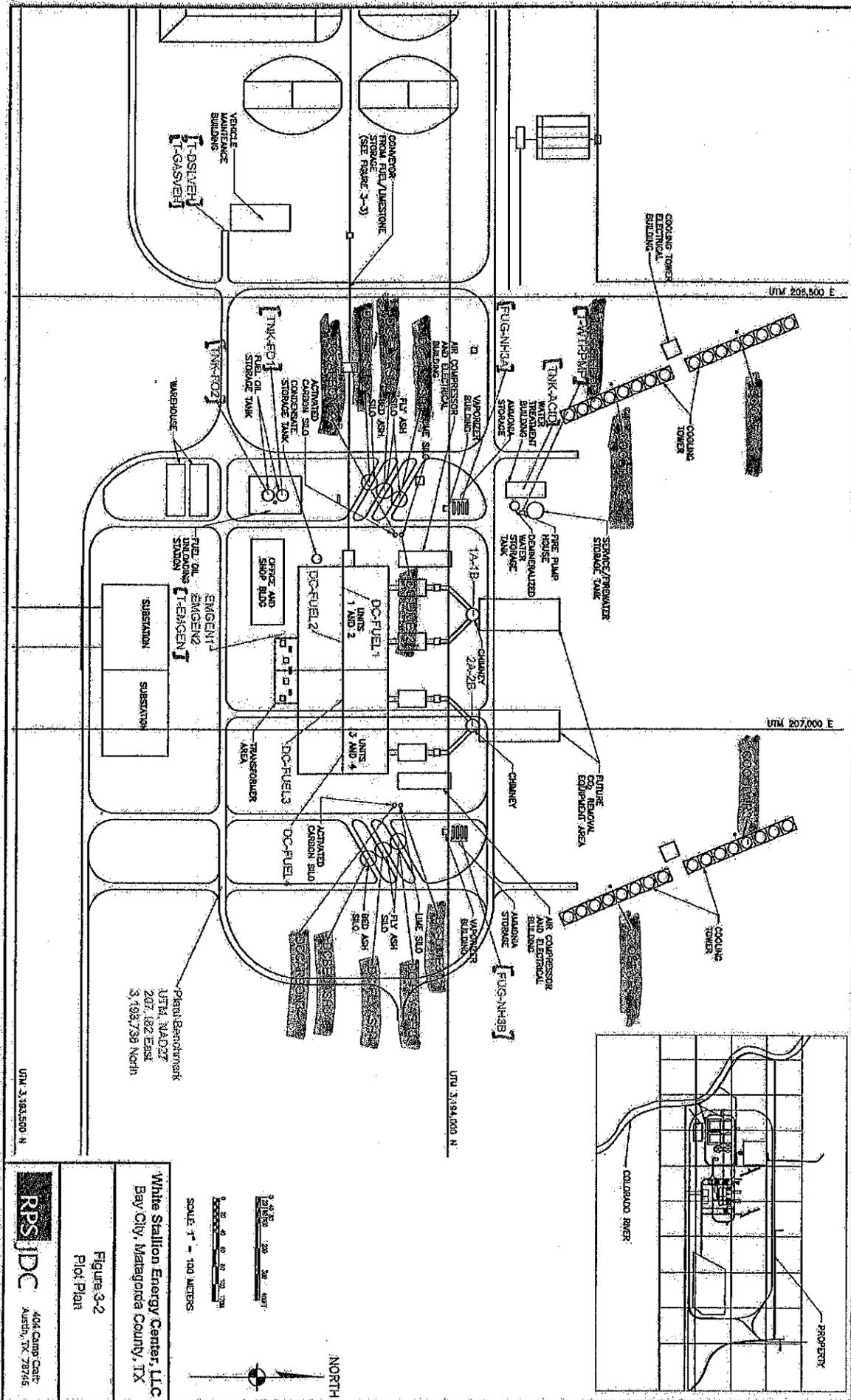
Further affiant sayeth not.”


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.




Notary Public, State of TEXAS,

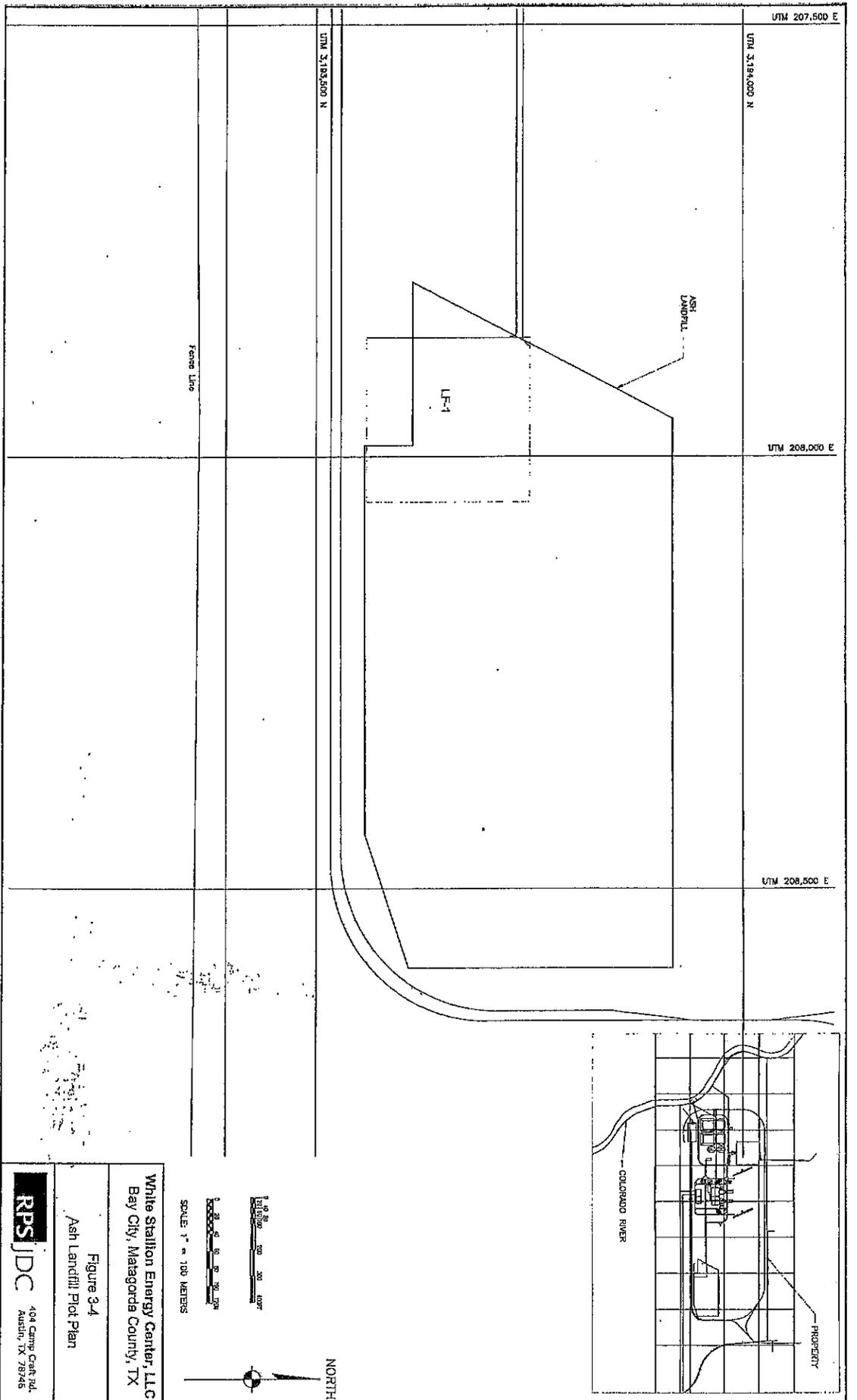


→ GPN MOVED
 [] → NOT MODELLED

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

Figure 3-2
 Plot Plan

RPS/JDC 404 Camp Carr
 Austin, TX 78745



RPS JDC
 404 Campy Creek Rd.
 Austin, TX 78748

Figure 3-4
 Ash Landfill Plot Plan

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

Entry Number	EPN Name (AERMOD Source ID)	EPN Name (Modelling 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		0
3	DCFUEL1	Unit 1 Fuel/Limestone Dust Collector	206,837.0	3,193,884.0	206,837.0	3,193,884.0	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		0
5	DCFUEL3	Unit 3 Fuel/Limestone Dust Collector	206,965.0	3,193,884.0	206,965.0	3,193,884.0	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		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	TRSPR1	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	TRSPR2	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	TRSPR3	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	TRSPR4	CO-4 to Mobile Stack	206,200.0	3,193,884.0	206,335.0	3,193,988.0	170	38	33
44	TRSPR5	CO-5 to Mobile Stack	206,200.0	3,193,884.0	206,335.0	3,193,988.0	170	38	34
45	TRSPR6	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	TRSPR7	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

Entry Number	EPN Name (AERMOD Source ID)	EPN Name (Modelling 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	?	?			

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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
<p align="center">Texas Commission on Environmental Quality (Defendant)</p>	<p>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</p>
<p align="center">Environmental Defense Fund, Inc. (Plaintiff)</p>	<p>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</p>
<p align="center">White Stallion Energy Center, LLC (Intervenor)</p>	<p>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</p>

AFFIDAVIT OF ROBERTO GASPARINI, Ph.D.

STATE OF TEXAS §

COUNTY OF TROVIS §

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 corrects typographical errors contained in my prior affidavit dated March 3, 2011.

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 a SOAH proceeding regarding an application for a solid-fuel fired power plant.

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

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 10 microns in diameter or less ("PM₁₀"). The short-term PSD increment standard is 30 micrograms per cubic meter ("µg/m³"). 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 µg/m³ of exceeding the 24-hour PM₁₀ 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.

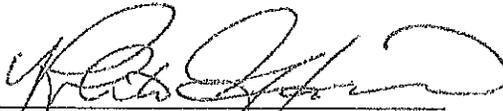
7. I have compared the Air Permit Site Plan and WSEC's Air Dispersion Modeling to a site plan dated October 25, 2010 that was submitted to the Corps in November 2010 (the "October 2010 Site Plan"). See Attachment 2. The October 2010 Site Plan is materially different from the Air Permit Site Plan. When 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 PM₁₀.

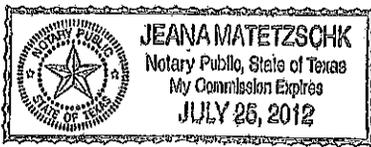
9. Due to the change in location of so many emissions sources, WSEC's Air Dispersion Modeling submitted to TCEQ in December 2008 and supplemented in February 2009 cannot show whether the proposed source as depicted in the October 2010 Site Plan would comply with applicable air quality requirements, including the 24-hour PM₁₀ 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.

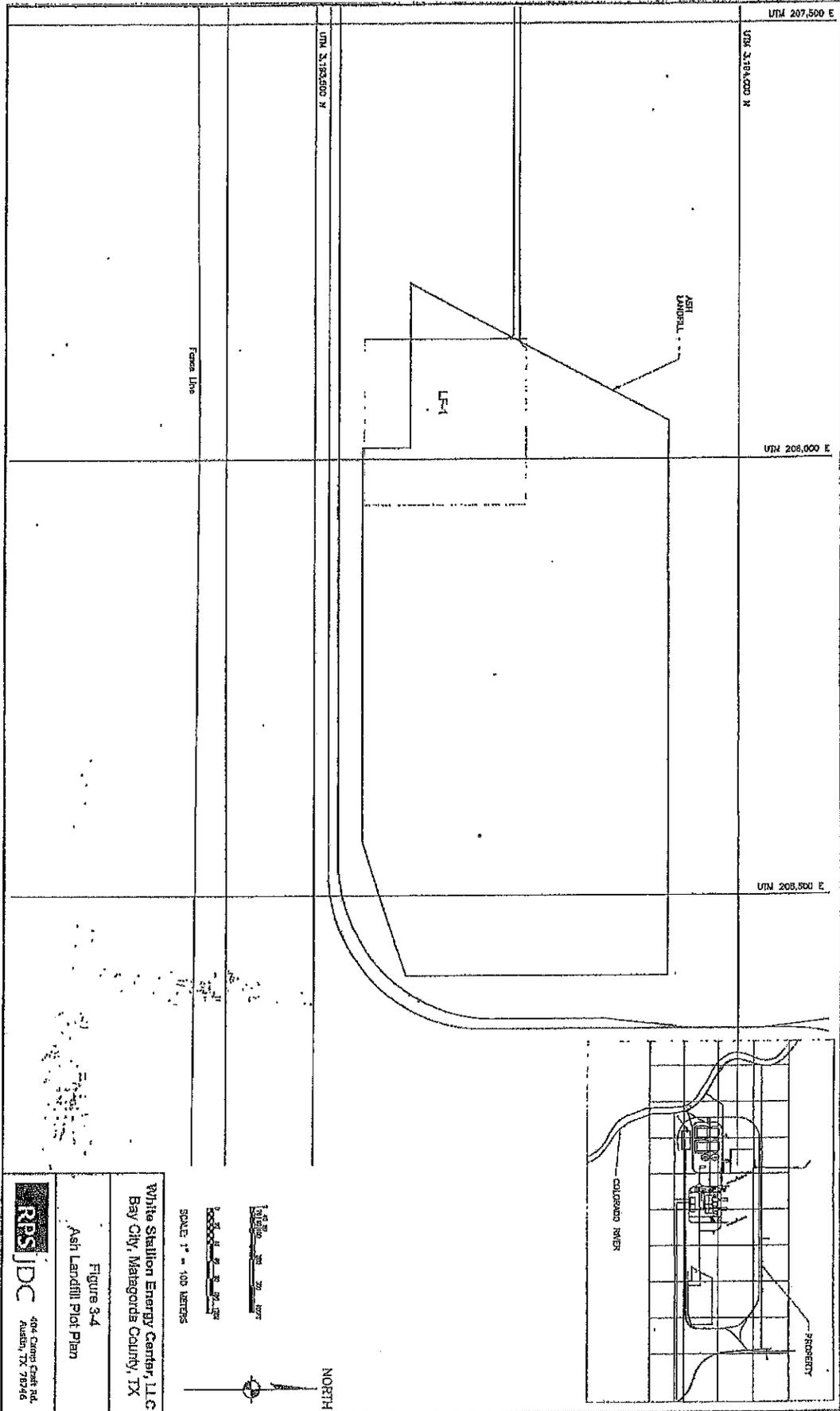
Further affiant sayeth not."


Roberto Gasparini, Ph. D.

SUBSCRIBED AND SWORN to before me, the undersigned notary, on this the 2nd day of May, 2011, to which witness my hand and official seal.




Notary Public, State of Texas



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

Figure 3-4
 Ash Landfill Pilot Plan

RPS JDC
 404 Camp Creek Rd.
 Austin, TX 78746

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	§	201 ST JUDICIAL DISTRICT

ORDER

On May 24, 2011, the Court heard Plaintiff Environmental Defense Fund, Inc. (“EDF”)’s Motion for Remand under Texas Government Code § 2001.175(c). EDF, Defendant Texas Commission on Environmental Quality (“TCEQ”) and Intervenor White Stallion Energy Center, LLC (“WSEC”) appeared through their respective counsel. The Court has considered the pleadings, the evidence and the arguments of and authorities cited by counsel. The Court is satisfied that the additional evidence is material and there are good reasons why it was not presented in the proceeding before the State Office of Administrative Hearings (“SOAH”) (SOAH Docket No. 582-09-3008) and the TCEQ (TCEQ Docket No. 2009-0283-AIR) and that unless the Court grants this motion, the public will not be afforded meaningful participation in the permit application review process. The Court therefore GRANTS the motion as follows.

1. It is ORDERED that, pursuant to Texas Government Code §2001.175(c), this matter be remanded 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 under applicable law.

2. It is FURTHER ORDERED that this appeal shall be abated pending the taking of such additional evidence and pending TCEQ's decision whether to change its findings and decision by reason of the additional evidence as provided under Tex. Gov't Code § 2001.175(c).

3. It is FURTHER ORDERED that, pursuant to Tex. Gov't Code § 2001.175(c), the additional evidence admitted in the re-opened TCEQ/SOAH proceedings and any changes in findings, new findings, or decisions shall be filed by TCEQ with this Court.

SIGNED this 20th day of JUNE, 2011.


JUDGE PRESIDING