

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

August 20, 2009

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

VIA FACSIMILE 512/239-5533

Re: **SOAH Docket No. 582-09-0651; TCEQ Docket No. 2008-0293-AIR; In Re: Application by Flint Hills Resources, LP for an Amendment to Air Permit Nos. 8803A AND PSD-TX-413M8 for the West Refinery in Nueces County, Texas**

Dear Mr. Trobman:

I have reviewed the exceptions filed by Citizens for Environmental Justice (CFEJ) to the Proposal for Decision (PFD) issued in this case. These exceptions generally restate arguments made in CFEJ's closing briefs or assert policy issues beyond the scope of the PFD.

One item I do wish to respond to is CFEJ's statement that the PFD mischaracterizes CFEJ's proposed means of addressing short-term emission rates. Page 18 of the PFD states:

. . . But for short-term, worst-case emission rates, CFEJ argues for using the highest values contained within the background data used to establish the AP-42 average emissions rates. In essence, CFEJ argues that the emission rate for the worst performing unit included in the EPA's data for AP-42 emission factors should be used as the short term emissions rate.

I believe this accurately characterizes CFEJ's position. Page 6 of CFEJ's Closing Brief stated:

. . . The testimony during hearing indicates that the simplest way to identify a worst-case factor is to assess the background data set used to calculate the average emission factor and to pick from the highest values within the available data [as] a reasonable worst-case value for the worst-case short-term factor.

In short, I do not believe CFEJ's exceptions support any change to the PFD or to the proposed Order. No other party filed exceptions.

Sincerely,

A handwritten signature in black ink that reads "Thomas H. Walston".

Thomas H. Walston
Administrative Law Judge

THW:nl
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STYLE/CASE: FLINT HILLS RESOURCES, LP

SOAH DOCKET NUMBER: 582-09-0651

REFERRING AGENCY CASE: 2008-0293-AIR

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HEARINGS**

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