

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 5, 2009

LaDonna Castañuela  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

2009 AUG -5 PM 4: 12  
CHIEF CLERKS OFFICE  
TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: Executive Director's Replies to Protestants' Exceptions to the Proposal for Decision regarding Amendment Application by Flint Hills Resources, LP; Air Permit Nos. 8803A, and PSD-TX-413M8; SOAH Docket No.582-09-0651; TCEQ Docket No. 2008-0293-AIR.

Dear Ms. Castañuela:

Enclosed please find the original and seven copies of the Executive Director's Replies to Protestants' Exceptions to the Proposal for Decision for the above-referenced matter.

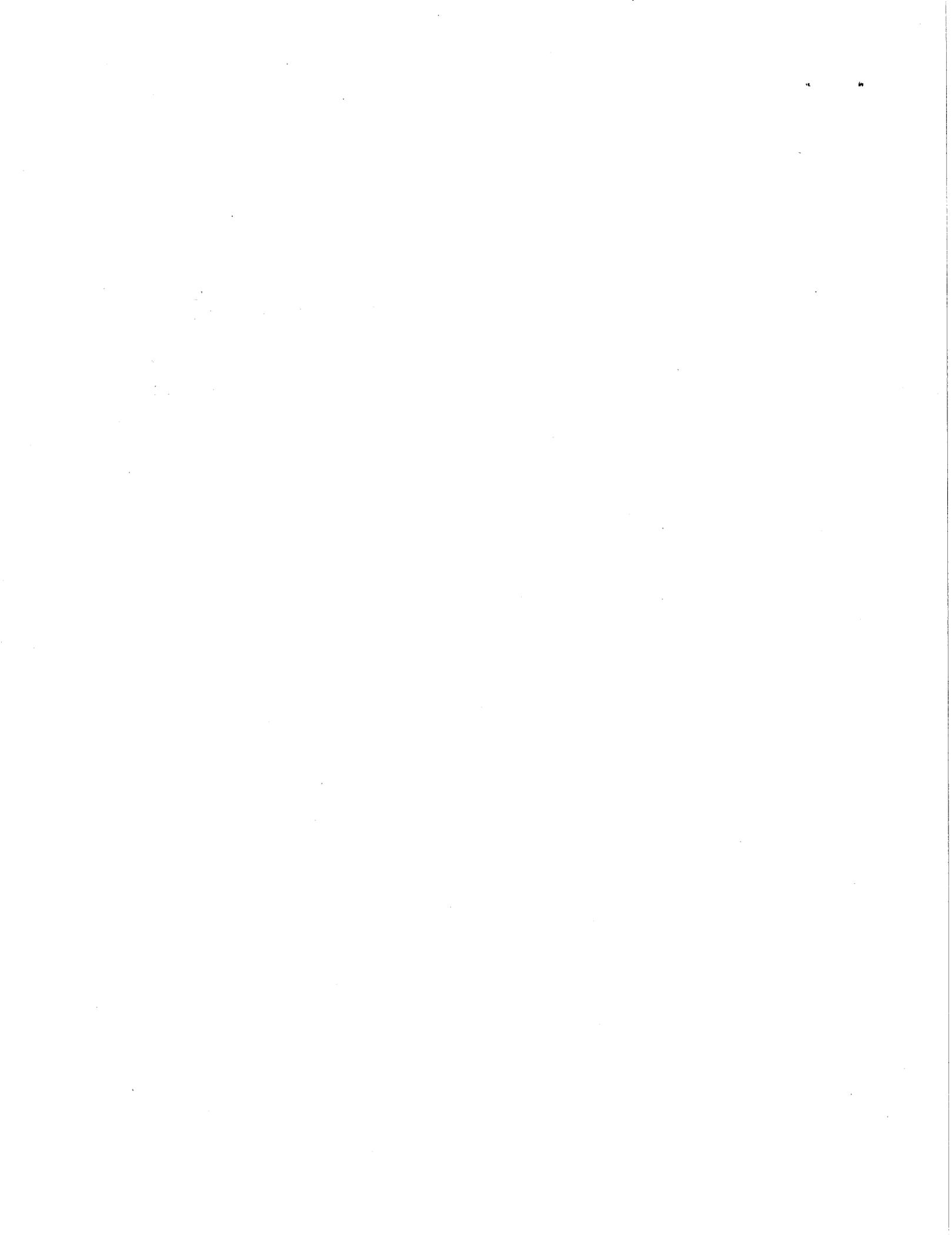
If you have any questions, please call me at 239- 6033.

Sincerely,

A handwritten signature in cursive script that reads "Erin Selvera".

Erin Selvera  
Staff Attorney  
Environmental Law Division

Enclosures



SOAH DOCKET NO. 582-09-0651  
TCEQ DOCKET NO. 2008-0293-AIR

2009 AUG -5 PM 4: 12

APPLICATION OF FLINT HILLS  
RESOURCES, LP FOR AN  
AMENDMENT TO AIR QUALITY  
PERMIT NUMBERS. 8803A AND  
PSD-TX-413M8 FOR THE WEST  
REFINERY IN NUECES COUNTY,  
TEXAS

§ BEFORE THE STATE CHIEF CLERK'S OFFICE  
§  
§  
§ OF  
§  
§ ADMINISTRATIVE HEARINGS  
§

**TCEQ EXECUTIVE DIRECTOR'S REPLIES TO PROTESTANTS' EXCEPTIONS TO  
THE PROPOSAL FOR DECISION**

TO THE HONORABLE COMMISSIONERS OF THE TCEQ:

COMES NOW the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) and files the following Replies to Protestant's Exceptions to the Administrative Law Judge's (ALJ) Proposal for Decision (PFD) in the above captioned matter.

**I. ISSUES OUTSIDE THE RECORD**

In the Introduction and Background section of Citizens for Environmental Justice's (CFEJ's) Exceptions to the Proposal for Decision, Protestants raise issues regarding the status of Texas' State Implementation Plan (SIP). The Executive Director respectfully requests that this information be disregarded for two reasons: First, the argument, including the correspondence referenced by the Protestants, is - by the Protestants own admission- not part of the record. Therefore, the argument is not properly before the ALJ for their consideration. Second, the information is not relevant to consideration of the two issues referred by the Commission for SOAH consideration.<sup>1</sup> For these reasons, the ALJ should disregard Protestants' argument and recommend that it not be considered by the Commission.

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<sup>1</sup> On September 26, 2008, the Commission issued an Interim Order limiting the scope of the potential hearing to the following two issues: "A) Whether Flint Hills Resources' use of emission factors with regard to the changes requested in the amendment application or the changes in the proposed Special Conditions and MAERT are adequate to assure compliance with all related applicable requirements and limits; and B) Whether the monitoring

## **II. USE OF UPDATED AP-42 EMISSION FACTORS TO CALCULATE CAP CONTRIBUTIONS FOR THIS PERMIT AMENDMENT**

In their Exceptions to the Proposal for Decision, CFEJ relies on the protection of human health and the environment requirements under TCEQ rules in Chapter 116 as the basis for asserting that the Applicant has failed to meet their burden of proof for this application. CFEJ again focuses on the development of emission factors contending that the factors are not conservative and result in the underestimation of emissions. They restate the same arguments from their closing argument that a valid emission factor should provide a conservative overestimation of emissions so that protection of human health and the environment as required under Chapter 116 permitting requirements can be confirmed.<sup>2</sup> However, as explained in the ED's Reply to Closing Arguments, CFEJ misunderstands the relationship between an emission factor and an emission limitation, and the analysis required to show protection of human health and the environment.<sup>3</sup>

To support their argument, CFEJ calls in to question the acceptance of the Applicant's monitoring data, referring to the Mr. Taylor's testimony. However, there is no testimony or other evidence in the record to controvert Mr. Taylor's testimony and the exhibits supporting that testimony or that would raise concern for the ED's staff on this issue.

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requirements that are proposed for change in the amendment application or changed in the proposed Special Conditions or MAERT, as applicable are sufficient to determine compliance with the permit limits."

<sup>2</sup> CFEJ Closing Argument at 4.

<sup>3</sup> In the ED's Reply to Closing Arguments at pages 3-4, the ED explains the difference between an emission factor and an emission limitation and also how emission factors are not simply averages but were developed over time based on empirical data reviewed by EPA from many different equipment components. Also explained in Dr. Tamers direct testimony is the additional review conducted to ensure that the limits established in the MAERT are protective of human health and the environment. *See Also* Exhibit ED-6 at 1, Tr. p. 325 l. 20 - p. 329, l. 9, Exhibit ED-1 at 9-13, and Exhibit ED-1 at 13-15.

**III. CALCULATION OF SHORT-TERM AMMONIA CAP CONTRIBUTIONS FOR  
THIS PERMIT AMENDMENT**

CFEJ urges reform to the practice of using control efficiencies for short term fugitive component emission rates. However, as previously noted in the ED's Closing Argument and Replies to Closing Arguments, evidence in the record indicates compliance with permit limits and there is no evidence in the record to the contrary that would cause the ED to reevaluate the recommendation to issue the draft permit.<sup>4</sup>

**IV. CONCLUSION**

Based on evidence admitted and disputed issues identified in the record, the Executive Director stands by his preliminary decision to issue the permit amendment for the Flint Hills Resources, LP application.

Respectfully submitted,

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

Stephanie Bergeron Perdue, Deputy Director  
Office of Legal Services

Robert Martinez, Director  
Environmental Law Division



Erin Selvera, Staff Attorney  
Environmental Law Division  
State Bar No. 24043385  
P.O. Box 13087, MC 173  
Austin, Texas 78711-3087  
(512) 239-6033

REPRESENTING THE EXECUTIVE DIRECTOR  
OF THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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<sup>4</sup> Tr. p. 279, l. 11 through p.280, l. 2; TR. p. 271. l. 9-14; *See also*, Executive Director's Closing Arguments at 7.

**CERTIFICATE OF SERVICE**

This is to certify that all persons on the attached Service List have been sent a copy of the foregoing Executive Director's Replies to Protestant's Exceptions to the Proposal for Decision in accordance with SOAH rules on August 5, 2009.



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Erin Selvera  
Staff Attorney  
Environmental Law Division

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2009 AUG -5 PM 4: 12

CHIEF CLERKS OFFICE

**SERVICE LIST**  
**FLINT HILLS RESOURCES, LP**  
**DOCKET NO 2008-0293-AIR; PERMIT NO 8803**

FOR SOAH

VIA: Facsimile  
The Honorable Thomas Walston  
Administrative Law Judge  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> Street  
Austin, TX 78701  
Tel: (512) 475-4993  
Fax: (512) 475-4994

VIA: Facsimile  
State Office of Administrative Hearings  
Attn: SOAH Docket Clerk  
P.O. Box 13025  
Austin, TX 78711-3025  
Tel: (512) 475-4993  
Fax: (512) 475-4994

FOR THE APPLICANT:

Via email  
Christopher C. Thiele  
Patrick Lee  
Vinson & Elkins, LLP  
2801 Via Fortuna  
Suite 100  
Austin, Texas 78746-7568  
Tel: (512) 542-8632  
Fax: (512) 236-3283  
Email: cthiele@velaw.com  
plee@velaw.com

FOR THE PUBLIC INTEREST

COUNSEL:

Via email  
Mr. Garrett Arthur  
Texas Commission on Environmental  
Quality  
Public Interest Counsel, MC103  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-5757  
Fax: (512) 239-6377  
Email: garthur@tceq.state.tx.us

FOR THE CHIEF CLERK:

Via hand delivery  
Ms. LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental  
Quality  
Office of Chief Clerk, MC 105  
P. O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-3300  
Fax: (512) 239-3311

FOR THE HEARING REQUESTERS:

Via Facsimile  
Enrique Valdivia  
Counsel, Texas Rio Grande Legal Aid  
111 N. Main Ave.  
San Antonio, Texas 78212-4713  
Tel: (210) 212-3700  
Fax: (210) 212-3772

