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July 27, 2009

Thomas H. Walston
State Office of Administrative Hearings
Austin Office
300 West 15th Street, Suite 502
Austin, Texas 78701

VIA FAX No. (512) 475-4994
AND REGULAR MAIL

Re: **SOAH DOCKET 582-09-0651; TCEQ DOCKET NO. 2008-0293-AIR**; FLINT HILLS RESOURCES, TCEQ FLEXIBLE AIR QUALITY PERMIT NO. 8803A, PREVENTION OF SIGNIFICANT DETERIORATION (PSD) AIR QUALITY PERMIT NO. PSD-TX-413M8

Dear Judge Walston:

Enclosed for filing in the above referenced matter, please find CFEJ's reply brief.

All parties will be served with this document via email. Please contact me at the number above if you have any questions regarding this filing.

Sincerely,

Enrique Valdivia
Attorney at Law

CC: TCEQ Chief Clerk w/ enclosure original and seven copies
via fax no. 512-239-3311 AND REGULAR MAIL

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

	§	**BEFORE THE STATE OFFICE**
APPLICATION OF FLINT HILLS	§	
RESOURCES, LP FOR AN AMENDMENT	§	
TO AIR QUALITY PERMIT NUMBERS	§	**OF**
8803A AND PSD-TX-413M8 FOR THE WEST	§	
REFINERY IN NUECES COUNTY, TEXAS	§	
	§	**ADMINISTRATIVE HEARINGS**

CITIZENS FOR ENVIRONMENTAL JUSTICE'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

I. INTRODUCTION AND BACKGROUND

The permit under consideration here is a flexible permit that establishes an emission cap for each regulated contaminant. This overall cap equals the sum of the emission-cap contributions for each contaminant from each source at the Applicant's West Refinery in Corpus Christi. Protestant CFEJ has argued that the terms set forth in a flexible permit must be viewed in the context of the overall regulatory context and all applicable permit limits. It is import to accurately determine the emissions at individual facilities operating under flex permits because the accuracy of the ultimate cap is only as good as the accuracy of the contributions to that cap. Towards this goal CFEJ in this case has urged reconsideration of the appropriateness of AP-42 emission factors in determining emission contributions for flex permits.

CFEJ further urges the Commission to consider that the EPA as part of the Texas State Implementation Plan (SIP) has never approved TCEQ's flexible permitting program. EPA's apparent belief that the Texas air permitting program authorizes emission significantly above levels

allowed by federally authorize permitting programs should give pause in this case.[1] Particularly noteworthy is the Executive Director's proposed change to the Texas air permitting program to initiate rulemaking to disallow use of an insignificant emissions factor in flex permits.[2] Every emission cap proposed by Flint Hills in this case includes some adjustment usually 9% above the level of control equivalent to best available control technology (BACT) pursuant to 30 TAC 116.716. The Proposal for Decision makes note of this factor in two areas , the PM/PM10 and the FCCU Fugitives ammonia caps.

II. APPLICANT'S USE OF UPDATED EMISSIONS FACTORS TO CALCULATE CAP CONTRIBUTIONS IN ITS AIR PERMIT AMENDMENT APPLICATION.

The Proposal for Decision mischaracterizes CFEJ proposed means of addressing the problem of using AP-42 emission factors to short-term scenarios. CFEJ does not argue "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."[3] Mr. Bilsky's direct prefiled testimony argues for quantifying the uncertainty associated with use of emission factors by adjusting the short-term emissions factor by about 167% (ie one and two-thirds times) up to an order of magnitude increase (i.e. ten times) depending upon the particular issues associated with an individual case.[4] The EPA's Introduction to the AP-42, CFEJ Exhibit 2, reinforces this perspective.[5]

Mr. Bilsky testified that the use of AP-42 emission factors for leaking components may not be sufficiently conservative in estimating the short-term [pound per hour (lb/hour)] emission rates to

[1] While not part of the record of this case, the Executive Director was made aware of the EPA's position via Acting Regional Administrator Lawrence E. Starfield's June 24, 2009 letter to Mr. Mark R. Vickery.
[2] Mr. Mark Vickery's June 5, 2009 letter to Mr. Lawrence Starfield.
[3] PFD page 18, last sentence
[4] CFEJ Exh 1 p. 12, l. 6-21, p. 13, l. 1-4
[5] CFEJ Exh. 2 p. 3, last paragraph

result in protection of human health.[6] 30 TAC 116.111(a)(2)(A) specifically requires that an applicant provide "information which demonstrates that "(t)he emissions from the proposed facility will comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and property of the public." Emission factors must be sufficiently conservative to represent short-term worst-case emissions scenarios for the purpose of satisfying the TCEQ health effects review considerations. The worst-case hourly emission rate is usually the emissions that can occur in any hour during the year and the AP-42 emission factors and TCEQ fugitive emissions factors represent an average value not an instantaneous maximum emission rate representative of a short-term maximum.

The Proposal for Decision accepts at face value Applicant's assertion that the CEMS data is accurate and that is shows "that actual emissions of CO from the Heater are far below the cap contributions calculated using the update AP-42 factors." [7] However, Applicant's witness Mr. Taylor testified in rebuttal "scrubbing" of the CEMS data and back calculation was necessary to make his point because 75% of the CEMS data he reviewed for NOX exceedences was invalid data. Mr. Taylor conceded on rebuttal that there could well be invalid data throughout the CEMS results.

III. APPLICANT'S CALCULATION OF SHORT-TERM AMMONIA CAP CONTRIBUTIONS FOR PIPING AND OTHER FUGITIVE COMPONENTS ASSOCIATED WITH THE SNCR SYSTEM INSTALLED AT THE FCCU CO BOILER

A leak most likely will not be detected and repaired when it first occurs; it is more likely that an uncontrolled leak will occur for some time before discovery and action is taken and that duration of leakage could easily be for an hour or more. The application of control efficiency for fugitive

[6] CFEJ Exh. 1, p. 13, l. 15-21 through p. 14, l. 1-15
[7] Proposal for Decision page 17, 2nd paragraph, 3rd sentence,

leaks should only be applicable to long-term scenarios; over the long haul an implemented leak detection and repair (LDAR) program will result in reduced emissions, that is, on an annual basis. TCEQ Draft FHR Permit Special Condition 18, Paragraph I, allows 15 days or longer for a repair to be made; during the time period before repair is made a leak occurs at its uncontrolled rate. Special Condition #25, requires leak checks for ammonia once per shift and immediately, but no later than one hour upon detection of a leak, plant personnel shall attempt to (1) isolate the leak, (2) commence repair or replacement of the leaking component and/or (3) collect or contain the leak until repair can be made.[8] The time between a leak starting and being detected during each shift can be several hours, then the provision allows an additional hour for action to be taken against the detected leak. It is during this time period that no "control" of the leak emission rate can be accomplished; only after action by refinery personnel against the leak is commenced can the leak emission be reduced or stopped. There will be hours during leak episodes during which leak emissions will be uncontrolled.

FHR applied a "control efficiency" to its fugitive component lb/hour emission rates. Since there is no "control" of a fugitive leak until the time a repair is completed, the "control efficiency" concept applied to short-term emission rates translates to a "percentage of leaking components" by subtracting the percent "control efficiency" from 100%. If the "control efficiency" for LDAR applied to valves is 97% the correct calculation is to apply the 97% control to the uncontrolled annual emissions but not to the short-term rates. If it is applied to the short-term rates for valves, for example, then FHR is committing to having no more than (100% – 97%) = 3% of all the valves leaking in any given hour. CFEJ argues that Applicant should not apply "control efficiency" to the

[8] FHR Exh. 8 p. 26

short-term lb/hour fugitive components emission rates and should reevaluate the TCEQ health effects impacts of ammonia emissions from the facility.

The Proposal for Decision characterizes CFEJ's position on control efficiencies as simply a disagreement with TCEQ policy.[9] CFEJ actually contends the use of control efficiencies in this case is simply a mistake in that the concept does not square with the reality of what happens when there is a leak. CFEJ urges a reform to this practice.

VII. CONCLUSION

Applicant has failed to meet its burden of proof with respect to the requirements of Chapter 116 health effects review because its use of emission factors fail to show it has accurately identified the short-term worst-case emissions scenario for certain pollutants. Applicant's calculation of short-term ammonia cap contributions understates the short-term worst-case individual source emissions.

Respectfully submitted,

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ATTORNEYS FOR CITIZENS FOR
ENVIRONMENTAL JUSTICE

[9] Propsoal for Decision page 25

CERTIFICATE OF SERVICE

On the 27th day of July, 2009, true and correct copies of the foregoing instrument were served on all persons on the parties listed below by the undersigned via deposit into the U.S. Mail, facsimile, electronic mail, and/or hand delivery.

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From: ENRIQUE Valdivia Fax: 210 212 3772

Pages: 8

Re: TCEQ Docket ~~2008~~ 2008-0293-AIR SOAH Docket 582-09-0651 Flint Hills Permit 48803A

Original to follow: Yes [X] No [ ]

MESSAGE:

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