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October 20, 2009

Via Facsimile (512) 239-3311
& Overnight Delivery

Ms. LaDonna Castanuela
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC 105)
12100 Park 35 Circle
Building F, Room 1101
Austin, Texas 78753

CHIEF CLERKS OFFICE
2009 OCT 20 PM 12:02
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

RE: Application by Aspen Power, L.L.C., for proposed Air Quality Permit Numbers:
81706, PSD-TX 1089, HAP 12; TCEQ Docket No. 2008-1145-AIR; SOAH
Docket No. 582-09-0636

Dear Ms. Castafiuela:

Enclosed for filing in the above-referenced matter are an original and 7 copies of the following:

1. Joint Motion to Remand to the Texas Commission on Environmental Quality; and
2. Joint Motion to Remand to the State Office of Administrative Hearings.

Thank you for your attention to this matter.

Sincerely,

CRAIN, CATON & JAMES, P.C.

By:


Robert E. "Robin" Morse, III

REM/nm
Enclosures

October 20, 2009

Page 2

cc: Honorable Judge Sarah Ramos
300 West 15th Street, Suite 502
Austin, Texas 78701

Via Facsimile: (512) 475-4994

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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2009 OCT 20 PM 12: 02

CHIEF CLERKS OFFICE

SOAH DOCKET NO. 582-09-0636
TCEQ DOCKET NO. 2008-1145-AIR
TCEQ AIR QUALITY PERMIT NO. 81706,
PSD-TX-1089, HAP12

APPLICATION OF	§	BEFORE THE
ASPEN POWER, L.L.C. for	§	STATE OFFICE OF
LUFKIN GENERATING PLANT	§	ADMINISTRATIVE HEARINGS
LUFKIN, ANGELINA COUNTY	§	

**JOINT MOTION TO REMAND TO THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW Aspen Power, L.L.C. (the "Applicant"), Aaron and Willie Hartsfield, Sylvester McClain, Theodore Mathis, Betty Mathis, Annie Mae Shelton, Dr. Dallas Pierre, Oletha Durham, and Donald Anderson (collectively referred to as the "Protestants") and file this Joint Motion to Remand to the Texas Commission on Environmental Quality. The Executive Director of the Texas Commission on Environmental Quality ("TCEQ") and the Office of Public Interest Counsel of the TCEQ are unopposed to this Joint Motion to Remand.

Since the issuance of the Honorable Judge Ramos' Proposal for Decision on August 24, 2009, the Applicant and the Protestants in the above styled hearing held before the State Office of Administrative Hearings have settled and resolved all pending issues involving TCEQ Air Quality Permit No. 81706, PSD-TX-1089 and HAP 12 (the "Permit"). Further the TCEQ Executive Director concurs with the permit provisions listed on Attachment A for incorporation into the Permit. Accordingly, the Applicant and the Protestants request that this permit application be remanded back to the TCEQ for further processing as an uncontested application.

Respectfully submitted,



By:

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PROTESTANTS

By: _____

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By: _____

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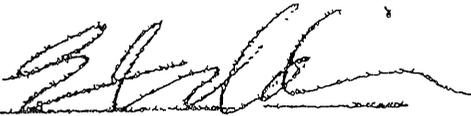
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PUBLIC INTEREST COUNSEL
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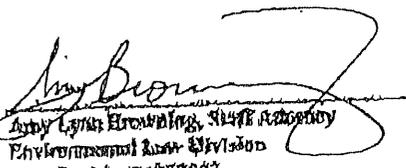
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REPRESENTING THE OFFICE OF
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OF THE TEXAS COMMISSION ON
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CERTIFICATE OF SERVICE

I certify by my signature that on October 20, 2009, a complete and correct copy of the foregoing was served to the following party representatives as indicated:

Honorable Judge Sarah Ramos
300 West 15th Street, Suite 502
Austin, Texas 78701

Via Facsimile: (512) 475-4994

Ms. LaDonna Castanuela
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC 105)
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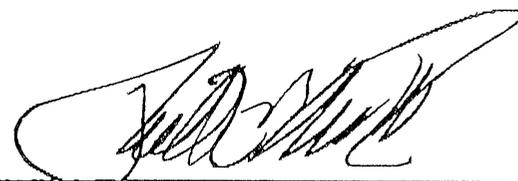
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Robert E. "Robin" Morse, III

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 OCT 20 PM 12:02
CHIEF CLERK'S OFFICE

ATTACHMENT A Permit Provisions

CHIEF CLEANS OFFICE

2009 OCT 20 PM 12:02

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

The Executive Director concurs with the following provisions to draft Permit No. 80006

1. The following emissions limits* applicable to the Wood-Fired Boiler (Emission Point LBLR01) shall be included as limits in Aspen's permit:

<u>CO</u>	<u>NOx</u>	<u>PM (filterable)</u>
0.075 lb/MMBtu	0.075 lb/MMBtu	0.012 lb/MMBtu
51.95 lb/hr	51.95 lb/hr	8.31 lb/hr
228 ton/yr	228 ton/yr	36.4 ton/yr

VOC

<u>0.010 lb/MMBtu</u>
6.93 lb/hr
30.3 ton/yr

The total PM limit of 0.025 lb/MMBtu (17.31 lb/hr, 71.0 tons/yr) in the original permit issued to Aspen by TCEQ on July 25, 2008 will remain in the permit.

* All emission limits are based on a rolling, 30-day average.

2. Aspen agrees to include the following new Special Condition 28.D to the Permit which will read as follows:

"Stack sampling for PM/PM10 shall be performed once annually during periods of normal operation, except that if, after five years of stack sampling, the average of the two prior annual stack sampling results for PM/PM10 is less than 70 percent of the applicable emission limits, then compliance stack sampling for such pollutant shall be conducted once every three years. The PM/PM10 stack test data will be correlated to the contemporaneous opacity readings obtained during the test."

3. Aspen agrees to install selective catalytic reduction ("SCR") as a substitute for SNCR and the Permit shall incorporate the appropriate provisions as necessary to accommodate that technology, including but not limited to Special Conditions 9, 10, 22.C.5, and 26.B.

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CHIEF CLERKS OFFICE
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TEXAS COMMISSION
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RE: Application by Aspen Power, L.L.C., for proposed Air Quality Permit Numbers:
81706, PSD-TX 1089, HAP 12; TCEQ Docket No. 2008-1145-AIR; SOAH
Docket No. 582-09-0636

Dear Ms. Castafiuela:

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1. Joint Motion to Remand to the Texas Commission on Environmental Quality; and
2. Joint Motion to Remand to the State Office of Administrative Hearings.

Thank you for your attention to this matter.

Sincerely,

CRAIN, CATON & JAMES, P.C.

By: 
Robert E. "Robin" Morse, III

REM/nm
Enclosures

SOAH DOCKET NO. 582-09-0636
TCEQ DOCKET NO. 2008-1145-AIR
TCEQ AIR QUALITY PERMIT NO. 81706,
PSD-TX-1089, HAP12

2009 OCT 20 PM 5:02
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

APPLICATION OF § BEFORE THE
ASPEN POWER, L.L.C. for § STATE OFFICE OF
LUFKIN GENERATING PLANT § ADMINISTRATIVE HEARINGS
LUFKIN, ANGELINA COUNTY §

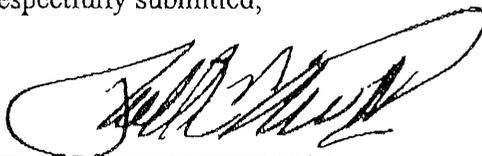
**JOINT MOTION TO REMAND TO THE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

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Respectfully submitted,



By:

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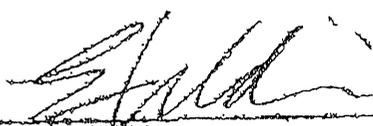
Respectfully submitted.

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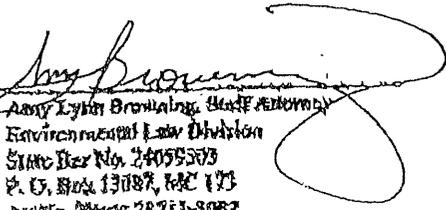

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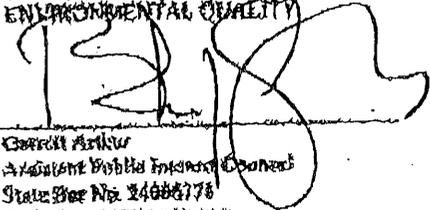

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REPRESENTING THE OFFICE OF
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 ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify by my signature that on October 20, 2009, a complete and correct copy of the foregoing was served to the following party representatives as indicated:

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Robert E. "Robin" Morse, III

TEXAS
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ON ENVIRONMENTAL
QUALITY

09 OCT 20 PM 12:02

ATTACHMENT A Permit Provisions

The Executive Director concurs with the following provisions to draft Permit No. 81706

1. The following emissions limits* applicable to the Wood-Fired Boiler (Emission Point LBLR01) shall be included as limits in Aspen's permit:

<u>CO</u>	<u>NOx</u>	<u>PM (filterable)</u>
0.075 lb/MMBtu	0.075 lb/MMBtu	0.012 lb/MMBtu
51.95 lb/hr	51.95 lb/hr	8.31 lb/hr
228 ton/yr	228 ton/yr	36.4 ton/yr

VOC

0.010 lb/MMBtu
6.93 lb/hr.
30.3 ton/yr

CHIEF CLERKS OFFICE

2009 OCT 20 PM 12:02

TEXAS
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The total PM limit of 0.025 lb/MMBtu (17.31 lb/hr, 71.0 tons/yr) in the original permit issued to Aspen by TCEQ on July 25, 2008 will remain in the permit.

* All emission limits are based on a rolling, 30-day average.

2. Aspen agrees to include the following new Special Condition 28.D to the Permit which will read as follows:

"Stack sampling for PM/PM10 shall be performed once annually during periods of normal operation, except that if, after five years of stack sampling, the average of the two prior annual stack sampling results for PM/PM10 is less than 70 percent of the applicable emission limits, then compliance stack sampling for such pollutant shall be conducted once every three years. The PM/PM10 stack test data will be correlated to the contemporaneous opacity readings obtained during the test."

3. Aspen agrees to install selective catalytic reduction ("SCR") as a substitution for SNCR and the Permit shall incorporate the appropriate provisions as necessary to accommodate that technology, including but not limited to Special Conditions 9, 10, 22.C.5, and 26.B.

CRAIN CATON — & — JAMES

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	Hon. Judge Sarah Ramos	(512) 475-4994
	Garrett Arthur	(512) 239-6377
	Amy Browning	(512) 239-0606
	Enrique Valdivia	(210) 212-3772
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CHIEF CLERKS OFFICE

2009 OCT 20 PM 12:01

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

FROM: Robert E. "Robin" Morse, III NUMBER OF PAGES: 17
(INCLUDING COVER PAGE)

DATE: October 20, 2009

C/M#: 5486/001

SUBJECT: SOAH Docket No. 582-09-0636; TCEQ Docket No. 2008-1145-AIR; TCEQ Air Quality Permit No. 81706, PSD-TX-1089, HAP12

MESSAGE: Attached are two joint motions to remand.

PLEASE CHECK TRANSMISSION AFTER THE LAST PAGE.
IF YOU ARE NOT RECEIVING CLEARLY, OR IF YOU
HAVE ANY PROBLEMS WITH THE TRANSMISSION,
PLEASE CALL US BACK IMMEDIATELY AT 713.658.2323.

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