

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 8, 2010

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

RE: SOAH Docket No. 582-09-2045; TCEQ Docket No. 2009-0032-AIR; APPLICATION OF IPA COLETO CREEK, LLC FOR AIR QUALITY PERMIT NO. 83778, PSD-TX-1118, and HAP18.

Dear Ms. Castañuela:

Enclosed for filing in the above captioned matter you will find an original and 7 copies of the Executive Director's Exceptions to the PFD in the above captioned matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ross W. Henderson".

Ross W. Henderson
Staff Attorney
Environmental Law Division

cc:

Mailing list

SOAH Docket No. 582-09-2045
TCEQ Docket No. 2009-0032-AIR

APPLICATION OF IPA COLETO	§	BEFORE THE TEXAS
CREEK, LLC FOR AIR QUALITY	§	
PERMIT NO. 83778, PSD-TX-1118,	§	COMMISSION ON
and HAP18.	§	
	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE PFD

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, the Executive Director of the Texas Commission on Environmental Quality ("TCEQ" or "Commission"), and files these Exceptions to the PFD in the above-referenced matter. The Executive Director ("ED") raises the following exception to the Proposal for Decision (PFD): Finding of Fact No. 132 should be modified to reflect that modeling is required where ambient air exists, including areas that are "on-property." The ED also notes that the Administrative Law Judges' (ALJs') recommended changes to BACT necessitate numerical changes to the Maximum Allowable Emissions Table (MAERT) which flow from the lower BACT recommendation. The ED also requests one other non-substantive change to the MAERT.

I. EXCEPTIONS

A. Finding of Fact No. 132 and public access to the Perdido Creek area

In section VIII(A)(2) of the PFD (pages 54 to 55), the ALJs discuss whether the Applicant was required to submit modeling for the Perdido Creek area as part of a State Effects Review. The evidence at the hearing showed that the public has access to the portion of Perdido

Creek that was under consideration. While the Applicant did not originally submit modeling for the area in its application, it included modeling for the area in its prefiled testimony and such modeling was reviewed for adverse health effects by TCEQ toxicologist, Dr. Jong-Song Lee. Dr. Lee noted in his testimony that modeling in the Perdido Creek Area showed a maximum 1-hour concentration of coal dust exceeding the 1-hour ESL for coal dust by approximately four times. However, for the reasons enumerated in Finding of Fact No. 171, Dr. Lee found that the concentration would not result in adverse health effects. Even so, the Applicant continued to argue that TCEQ guidance specifically excluded the area from the requirements of a State Effects Review on the basis that it was not off-property. The ALJs declined to decide the issue on the basis that the Applicant ultimately submitted additional modeling which was reviewed by the ED and found no reason to exclude the modeling.

The ED does not disagree with the ALJs' ultimate conclusions regarding a finding of "no adverse health effects." However, the ED disagrees that the question depends upon whether the area is considered on-property or off-property. Finding of Fact No. 132 states "Evaluation of on-property impacts of non-criteria pollutants is not required per TCEQ guidance." This finding essentially states Applicant's argument regarding the issue.

The ED respectfully disagrees with this finding. TCEQ guidance requires evaluation of non-criteria pollutants wherever there is ambient air, including on-property receptors such as where the public may have access. TCEQ guidance document APDG 5874, *Modeling and Effects Review Applicability*, Exhibit ED-28 to the ED's prefiled testimony, defines *receptor* as "a location where the public could be exposed to an air constituent in the ambient air."

The ED would respectfully request that the finding of fact be stricken, or in the alternative, amended to state “Evaluation of impacts of non-criteria pollutants is required where ambient air exists per TCEQ guidance.”

B. Other non-substantive changes requested

The ALJs recommended approval of the draft permits in their entirety except for a lower BACT emission limit for particulate matter (PM₁₀). The draft permit emission limit was 0.035 lb/MMBtu whereas the ALJs recommended a reduction of that limit to 0.025 lb/MMBtu. The ED notes that this change, if approved by the Commission, would require changes to the Maximum Allowable Emissions Rates Table (MAERT) which flow from the reduced BACT emission limit. Specifically, PM/PM10 lbs/hr should be changed from 213 to 167 and the tons per year (tpy) should be changed from 935 to 730. *See Exhibit ED-9, page 441.* If the Commission decides to approve the ALJs’ recommended change to the BACT, the ED respectfully requests that these changes be reflected in the final order.

Finally, while reviewing the MAERT, the ED noticed that the Air Contaminant Name (PM/PM10) is missing from the MAERT for “Emission Point – Coal P-10” located at the bottom of page 442 of Exhibit ED-9. This non-substantive change should be made to clarify the record.

II. CONCLUSION AND PRAYER

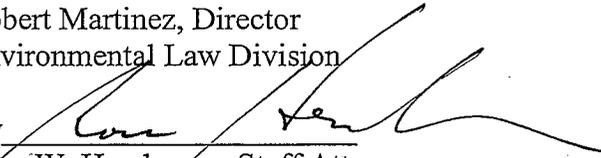
For the above reasons, the Executive Director respectfully requests that Commission make the requested changes to the Proposal for Decision.

Respectfully Submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

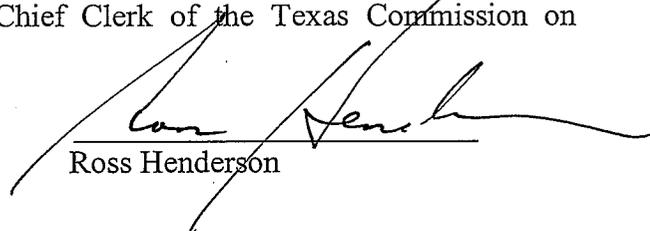
Mark R. Vickery, P.G., Executive Director

Robert Martinez, Director
Environmental Law Division

By 
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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of March, 2010, a true and correct copy of the foregoing document was filed with the Chief Clerk of the Texas Commission on Environmental Quality.


Ross Henderson

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SOAH DOCKET NO. 582-09-2045
TCEQ DOCKET NO. 2009-0032-AIR

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LaDonna Casteñuela, Chief Clerk (MC-105)