

LOWERRE, FREDERICK, PERALES,
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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2010 MAY -3 PM 4: 41

CHIEF CLERKS OFFICE

May 3, 2010

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

Via Facsimile (512) 239-3311

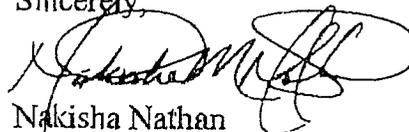
Re: ***Application of Las Brisas Energy Center, LLC, for State Air Quality Permit;
Nos. 85013, HAP48, PAL41, and PSD-TX-1138. SOAH Docket No. 582-09-
2005; TCEQ Docket No. 2009-0033-AIR***

Dear Ms. Castañuela:

An original and seven copies of the Medical Group's Motion to Extend Time to File Reply to Exceptions to PFD is enclosed for filing in the above-referenced matter.

If you have any questions or concerns, please contact me.

Sincerely,



Nakisha Nathan
Legal Assistant

Enclosures

CC: Mr. Les Trobman, General Counsel, TCEQ (Via Facsimile (512) 239-5533)
Service List

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SOAH DOCKET NO. 582-09-2005
TCEQ DOCKET NO. 2009-0033-AIR

CHIEF CLERKS OFFICE

APPLICATION OF LAS BRISAS § BEFORE THE STATE OFFICE
ENERGY CENTER, LLC §
FOR STATE AIR QUALITY PERMIT; § OF
NOS. 85013, HAP48, PAL41 AND §
PSD-TX-1138 § ADMINISTRATIVE HEARINGS

**MEDICAL GROUP'S MOTION TO EXTEND TIME
TO FILE REPLY TO EXCEPTIONS TO PFD**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:

COME NOW, the Coastal Cardiology Association, Dr. Gregg Silverman, the San
Patricio Aransas Refugio Medical Society, and Nueces County Medical Society
(hereinafter "the Medical Group" or "Group") and request an extension of time to file
their reply to exceptions to the Administrative Law Judges' Proposal for Decision, and in
support, would respectfully show the following:

I. INTRODUCTION & BACKGROUND

On March 29, 2010, the Administrative Law Judges mailed the Proposal for
Decision ("PFD") with regard to the Application of Las Brisas Energy Center, LLC for
State Air Quality Permit Nos. 85013, HAP48, PAL41, and PSD-TX-1138. There was a
period for exceptions and for replies to exceptions. On April 29, 2010, the Medical
Group filed – but, apparently not entirely before 5 p.m. – a reply to the exceptions to the
PFD. The reply specifically addressed suggestions made by other parties in response to
the ALJs' inquiry regarding § 382.0518 (d)&(e), Health & Safety Code. (This is the

provision about there having to be prepared a "report," before an air permit application may be denied.)

At approximately 4:55 PM, a legal assistant at LFPAR made multiple attempts to file this reply using the Texas Commission on Environmental Quality's e-Filing system. Each time an error message was displayed indicating the document was not in PDF format. However, it was converted to PDF format using the Adobe Acrobat software and was saved as a PDF. After confirming the format and making a second and third attempt, the legal assistant immediately sent the reply via facsimile transmission. According to the fax transmittal receipt in our office, the reply was sent to the TCEQ Chief Clerk at 4:58 PM.¹ Protestants also served the reply to the remaining parties, via email at 4:58 for those parties with electronic mail, and immediately thereafter by mail and facsimile transmission to those without.

I understand from the agency's Office of General Counsel that the TCEQ did not receive the facsimile transmission until 5:03 PM. Thus, the reply was date stamped as received on April 30, 2010.

II. ARGUMENT

TCEQ rules, at 30 TAC § 80.257(b), provide that the general counsel may change the deadlines to file pleadings following the proposal for decision after receiving a written request that includes an explanation that the requestor has conferred with other parties, whether the request is opposed by any party, propose dates and whether the judge

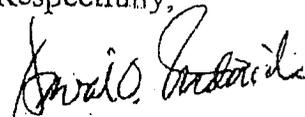
¹ See Attachment A, Fax Transaction Report, reflecting that the reply was sent to (512) 239-3311 at 3:58 PM. This time was actually 4:58, inasmuch as the time stamp on the machine had not been re-set to reflect Daylight Savings Time.

and the parties agree on the proposed dates. Extending the time to file the reply by 15 minutes in this matter will not result in any harm, prejudice, or delay.

PRAYER

In consideration of Protestants' reasonable efforts to file their reply prior to the deadline and the fact that a small delay in receipt of the reply will not prejudice any other party or delay consideration of the reply, Protestants respectfully request that the deadline for filing replies to exceptions to the PFD regarding the application of Las Brisas Energy Center, LLC for State Air Quality Permit Nos. 85013, HAP48, PAL41, and PSD-TX-1138 be extended to 5:15 P.M., April 29, 2010.

Respectfully,



David O. Frederick

Lowerre, Frederick, Perales,
Allmon & Rockwell
David Frederick
SBT No. 07412300
707 Rio Grande Street, Ste. 200
Austin, Texas 78701

COUNSEL FOR Dr. GREGG
SILVERMAN AND THE
COASTAL CARDIOLOGY
ASSOCIATION,
REPRESENTATIVE FOR THE
MEDICAL GROUP

CERTIFICATE OF CONFERENCE

I certify that on May 3, 2010, my staff conferred with the Administrative Law Judges and counsel for the parties regarding this motion. The Administrative Law Judges are unopposed to a 15 minute extension. The Applicant, Executive Director of the TCEQ, and Office of Public Interest Counsel are also unopposed to the requested extension. Protestants Sierra Club, Environmental Defense Fund, Texas Clean Air, LULAC and Roger Landress are unopposed. Mr. Manuel Cavazos III, the representative for Individual Protestants, did not object to the motion. My staff sent a detailed message to the representatives for Protestant Clean Economy Coalition, we have yet to receive a response regarding their position.

David Frederick

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2010 MAY -3 PM 4:12
CHIEF CLERKS OFFICE

CERTIFICATE OF SERVICE

By my signature above, I hereby certify that on May 3, 2010, a true and correct copy of the foregoing exceptions of the Medical Group were served upon the following by Facsimile, Electronic mail and/or U.S. First Class Mail:

For the Administrative Law Judges

The Honorable Tommy Broyles
The Honorable Craig Bennett
Administrative Law Judges
State Office of Administrative Hearings
PO Box 13025
Austin, Texas 78711-3025
Fax: (512) 475-4994

For the Executive Director

Ms. Erin Selvera
Mr. Ben Rhem
TCEQ, MC-175
P.O. Box 13087
Austin, Texas 78711-3087
Fax: (512) 239-0606

For the Applicant

Mr. John Riley
Mr. Chris Thiele
Vinson & Elkins
2801 Via Fortuna, Suite 100
Austin, Texas 78746
Fax: (512) 236-3283

For the Public Interest Counsel

Mr. Scott Humphrey
Office of Public Interest Counsel
TCEQ, MC-103
P. O. Box 13087
Austin, Texas 78711-3087
Fax: (512) 239-6377

For the Office of the Chief Clerk

Ms. LaDonna Castañuela
Office of the Chief Clerk
TCEQ, MC-105
P. O. Box 13087
Austin, Texas 78711-3087
Fax: (512) 239-3311

For the Sierra Club

Mr. Ilan Levin
Environmental Integrity Project
1303 San Antonio St., Suite 200
Austin, Texas 78701
Fax: (512) 584-8019

For Environmental Defense Fund

Mr. Tom Weber
McElroy, Sullivan & Miller LLP
P.O. Box 12127
Austin, Texas 78711
Fax: (512) 327-6566

For Texas Clean Air

Mr. Terrell W. Oxford
Susman Godfrey, LLP
901 Main, Suite 5100
Dallas, Texas 75202
Fax: (214) 665-0847

**For Susie Luna-Saldana and the
League of United Latin American
Citizens, Council No. 1**

Ms. Susie Luna-Saldana,
Education Chair
LULAC, Council No. 1
4710 Hakel Dr.
Corpus Christi, TX 78415
Fax: (361) 854-7453

For the Clean Economy Coalition

Mr. Gerald Sansing, Chairperson
Clean Economy Coalition
5426 Chevy Chase Drive
Corpus Christi, Texas 78412
Fax: (361) 854-5859

For Individual Protestants:

Mr. Manuel Cavazos, III
3409 Fairmont Dr.
Corpus Christi, Texas 78408

For Roger Landress

Mr. Michael Westergren Esq.
PO Box 3371
Corpus Christi, Texas 78404
Fax: (361) 765-6828

ATTACHMENT A

**LOWERRE, FREDERICK, PERALES,
ALLMON, & ROCKWELL**

707 Rio Grand, Suite 200
Austin, TX 78701
(512) 469-6000 Phone
(512) 482-9346 FAX

FAX COVER SHEET

CHIEF CLERKS OFFICE

2010 MAY -3 PM 4: 41

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COMMISSION
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QUALITY

To:

Ms. LaDonna Castañuela	(512) 239-3311
Mr. Les Trobman, General Counsel	(512) 239-5533
Judge Tommy Broyles	(512) 475-4994
Judge Craig Bennett	

From: David Frederick
Date: May 3, 2010

DOCUMENTS	NUMBER OF PAGES (not including cover pg.)
Medical Group's Motion to Extend Time to File Reply to Exceptions to PFD	7

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