

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

WILSON WAKEFIELD  
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2010 DEC 20 PM 2:47  
CHIEF CLERKS OFFICE

December 17, 2010

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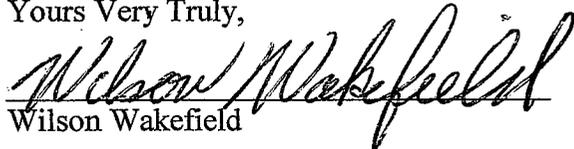
Via: U.S. Mail

Re: TCEQ Docket No. 2009-0033-AIR and SOAH Docket No. 582-09-2005;  
Application of Las Brisas Energy Center, LLC. for State Air Quality Permits Nos. 85013,  
HAP 48, Pal 41 and PSD-TX-1138.

Dear Mrs. Castanuela:

Enclosed for filing in the above referenced cause is the original and seven copies of Individual Protestant, Wilson Wakefield's Exceptions to the Administrative Law Judges' Proposal for Decision on Remand. Please call me at (361) 994-7038 (mobil) or (361) 852-1329 (home) if there any questions about this filing. Copies of this Notice and the Exceptions have been served as indicated on the attached service list.

Yours Very Truly,

  
Wilson Wakefield

- Enclosures: Wakefield Exceptions to ALJs' PFD on Remand, and Service list

SOAH Docket No. 582-09-2005  
TCEQ Docket No. 2009-0033-AIR  
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APPLICATION OF LAS BRISAS \* BEFORE THE STATE OFFICE  
ENERGY CENTER, LLC \* CLERKS OFFICE  
FOR STATE AIR QUALITY PERMIT: \* OF  
NOS. 85013, HAP48, PAL41, \*  
AND PSD-TX-1138 \* ADMINISTRATIVE HEARINGS

**INDIVIDUAL PROTESTANT WILSON WAKEFIELDS EXCEPTIONS TO THE ADMINISTRATIVE  
LAW JUDGES' PROPOSAL FOR DECISION ON REMAND**

Wilson Wakefield, an individual protestant, files the following exceptions to the  
Administrative Law Judges' (ALJs) Proposal for Decision on Remand (PFD on Remand), to-wit:

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**I. Introduction**

Wilson Wakefield (Wakefield) is a party to this case, grouped under the designation:  
"Individual Protestants" in SOAH Order Number 2.

Wakefield first expresses his appreciation to the ALJs for their conduct of the two  
hearings in which Wakefield participated; and for allowing him to ask questions and testify for  
the numerous individual protestants even though Wakefield was not designated as their  
representative.<sup>1</sup>

Second, Wakefield agrees with the ALJs' conclusion that , based on the evidence  
produced by the applicant, Las Brisas Energy Center, LLC (LBEC), it failed to meet its burden  
of proof.

<sup>1</sup> Manual Cavazos III, the designated representative for the individual protestants has not communicated with the parties, or taken any part in the proceedings.

Third, the reason for these exceptions is that the ALJs' conclusions are based on a narrow interpretation of the material handling emissions which were the subject of the remand<sup>2</sup>, and leave the door open for the Commission to issue a further remand order, rather than an outright denial of the LBEC permits, which Wakefield submits the evidence requires. Wakefield understands that other protestants like the Sierra Club, Environmental Defense Fund (EDF), Clean Economy Coalition(CEC) and possibly Texas Clean Air Cities Coalition (Cities), will file exceptions in more detail and with more technical expertise, but nevertheless asks the ALJs to re-consider and act in accord with the following arguments;

## **II. Exceptions**

### **A. The ALJ's analysis of material handling is flawed.**

LBEC had three proposed scenarios for material handling of the 7 million tons of petroleum coke (pet coke) and limestone required for the operation of its proposed electricity generating facility. The first scenario involved Las Brisas Terminal Company (LBTC), which LBEC intended to form to do the material handling for LBEC.<sup>3</sup> This idea was apparently abandoned by LBEC sometime after the plans for the LBTC material handling facility were obtained in discovery, because LBTC, would obviously be a stationary source, and its emissions from material handling would not be secondary emissions. After the first 9 day hearing, November 2009, and the ALJ's March 29, 2009 PFD revealed the deficiencies in the material handling put forth in its rebuttal testimony, LBEC presented two additional scenarios (LBEC Ex. 702 and 703) they called "option 1" and "option 2" showing material handling facilities utilizing the Port of Corpus Christi Authority (PCCA) bulk terminal 1(LBEC Ex. 702) or bulk terminal 3 (LBEC Ex. 703). LBEC insisted that the material handling facilities shown in their exhibits 702 and 703 were secondary sources because they would be operated by PCCA, a separate entity altogether. The ALJs' agreed that the emissions from option 1 and option 2 would be secondary emissions, solely because they would be operated by PCCA, a separate entity<sup>4</sup>. However, the evidence actually invalidates this conclusion for two reasons.

PCCA has not signed off on either option. In fact the only testimony on the subject came from Frank Brogan, the deputy Port Director, who in his pre-filed testimony stated unequivocally that "The PCCA has not yet settled on a final material handling design to serve LBEC" (LBEC

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<sup>2</sup> Commissioners' order July, 2010 remanding certain issues in the case to the SOAH judges for additional evidence.

<sup>3</sup> Testimony of Frank Brogan, Deputy Port Director, LBEC Ex. 800, p. 8, lines 14-20

<sup>4</sup> PFD on Remand, pp.

Ex. 800, p. 10, lines 10-11). Mr. Brogan later testified on rebuttal, when questioned, that there was nothing in the LBEC lease that requires LBEC to move their material through the port's bulk terminals.<sup>5</sup>

The second reason may be more compelling. EDF Exhibit 18 shows a schematic drawing of the Port of Corpus Christi. To flesh this out for the ALJs and the Commissioners, Wakefield took a series of photographs of the port area and operations of PCCA over a period from February, 2009 to almost the date of the Hearing on Remand, October 18, 2010. (Wakefield Ex. 2) In addition, some of his photographs were already in evidence through his testimony at the hearing, November 2009 (Wakefield Ex. 1). What these show is that the PCCA is not capable of handling the material required for the operation of the LBEC facility. Attached is Appendix A, incorporated in these exceptions showing some of material handling currently utilized by PCCA, and the emissions caused by their operations. Currently the port handles only about one and one-half million tons of pet coke annually, and no limestone<sup>6</sup>. However, LBEC will require over 7 million tons of pet coke and limestone annually, which amounts to over nineteen thousand tons each day. There is no way the Port of Corpus Christi can handle such a large amount given its present capacity and track record. To demonstrate this, we need look no farther than Wakefield's testimony about photo no. 28 of Wakefield Appendix A:<sup>7</sup>

“There's a lot of particulate matter there, and I want to tell you, this has been going on like this for two years that I've been out there. And that dust blows, you know, quite a bit. So my contention is if they are handling it like that now, what's it going to look like when they have to handle two times more than that.”

Of course, LBEC would require over four times the quantity currently handled by PCCA.(underscoring supplied for emphasis). But the point is that the PCCA cannot safely handle and supply the quantities of feed stock required by LBEC. The LBEC permit application calls for four circulating fluidized bed boilers operating 24 hours a day for 365 days each year. This requires a constant flow of pet coke, limestone, sand, ammonia, and the other materials required. Common sense tells us that they don't contemplate shutting down every time some third party like PCCA, fails to deliver the required daily supply of nineteen thousand tons of pet

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<sup>5</sup> Transcript p. 3144, lines 12-25

<sup>6</sup> Frank Brogan testimony, Transcript, p.3144, lines 3-11

<sup>7</sup> Transcript, p. 2745, lines 2-7

coke and limestone. The evidence does not support any conclusion other than LBEC must necessarily be its own material supplier and handler.

Wakefield further testified without contradiction, that the trains hauling pet coke are uncovered (Appendix A, photo No.7 Tr. p.2746, lines 19-24)<sup>8</sup>; that the pet coke moved by conveyors is uncovered (Photo No. 31, Tr. pp. 253, line 21-p. 2754, Line 5), and the plumes of pet coke from dumping the material are clearly visible from the designated fishing area on Nueces Bay (photo no 36, Tr.p. 2758, line25 – p. 2759, line 19. ). Reality trumps speculation, and Wakefield asserts that LBEC exhibits 702 and 703, are at best mere speculation and not anything the PCCA is capable of implementing.

**B. The evidence and findings require denial of the permits.**

Bulk dock 3, the site of one of the scenarios has no permit for material handling at all, but is a lay berth, currently occupied by two military ships under contract with a PCCA lessee.<sup>9</sup> The permit for bulk dock 1, in the only other scenario, is limited to handling a fraction of the LBEC requirements (LBEC Ex. 802, p. 4)<sup>10</sup>.

Wakefield further points out that the proposed site is on Nueces Bay, an important fishing and marine nursery area; and just north of St. Theresa Church, St. Theresa alternative school, and the heavily populated residential area along Lantana Drive. (Appendix A, photo 47) all within one mile of the LBEC proposed site.<sup>11</sup>

Since LBEC has offered no feasible plan for material handling, and given its proximity and likelihood to pollute an urban area, it has utterly failed to meet its burden of proof, and its permit request should be denied. If further argument were required, Wakefield would point out as reflected in his photographs<sup>12</sup>, that ships loaded with hydrocarbons pass by the LBEC site, on a frequent basis and in such proximity to create a further danger from the proposed four CFBs going full blast 24 hours a day, 365 days a year.

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<sup>8</sup> Fugitive emissions from the trains was not considered in any of the air quality modeling.

<sup>9</sup> Frank Brogan testimony, Tr. p. 3157, lines 12-24)

<sup>10</sup> The maximum throughput rates for unloading pet coke and aggregates at bulk dock 1 is 578,471 Tpy; and loading is 75,858 Tpy .

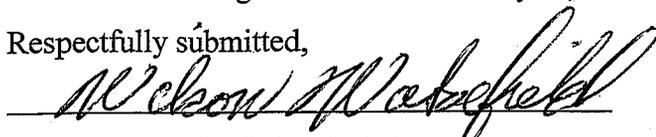
<sup>11</sup> The LBEC applications state that no school is within 3000 feet of the site. However, no survey was introduced, by LBEC, and St. Theresa Church and School appear to be close if not within 3000 feet.

<sup>12</sup> See for example photo no. 6, Appendix A, showing a tanker loaded with hydrocarbons passing the LBEC site. The tug is required to keep it in the narrow ship channel.

### III. Conclusion

Wakefield requests the ALJs grant his exceptions, find that LBEC has not properly included material handling in its emissions analysis; and that the permits should be denied.

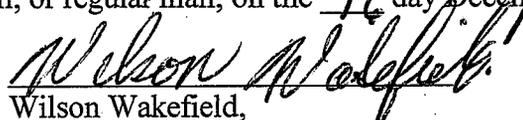
Respectfully submitted,



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### CERTIFICATE OF SERVICE

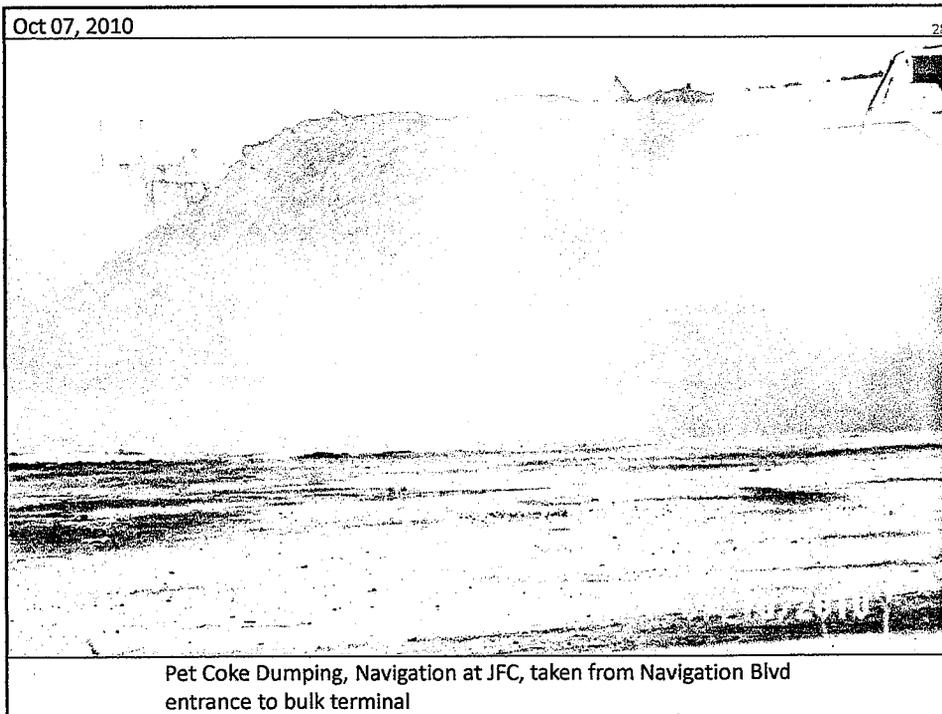
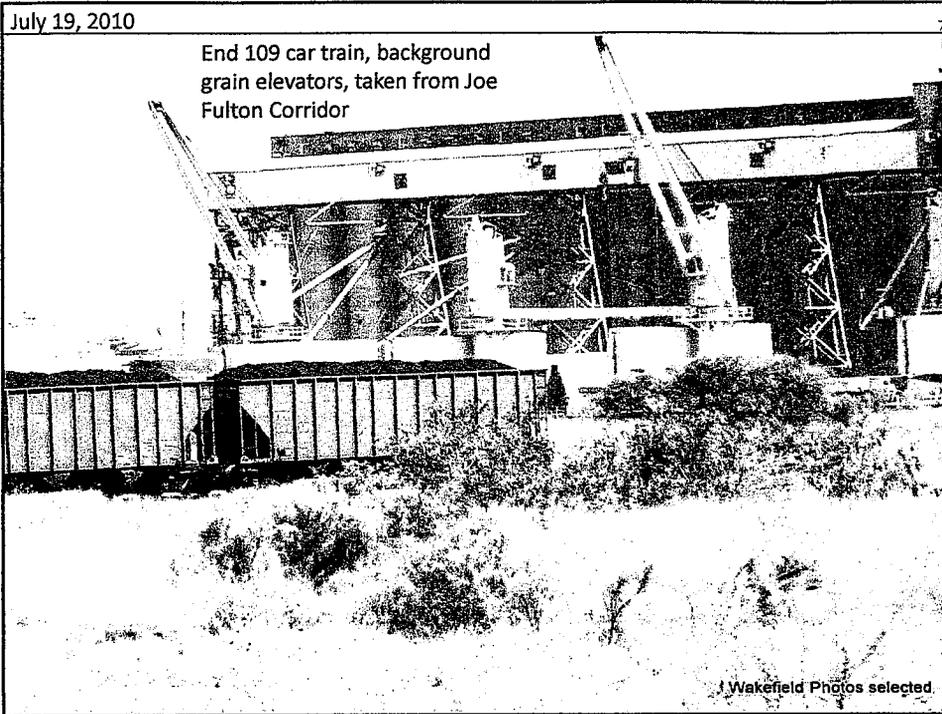
The undersigned certify that a true and correct copy of the foregoing Exceptions to PFD on Remand was filed with the Administrative Law Judges and served on the parties named on the attached service list by hand delivery, fax, e-mail, or regular mail, on the 16 day December 2010

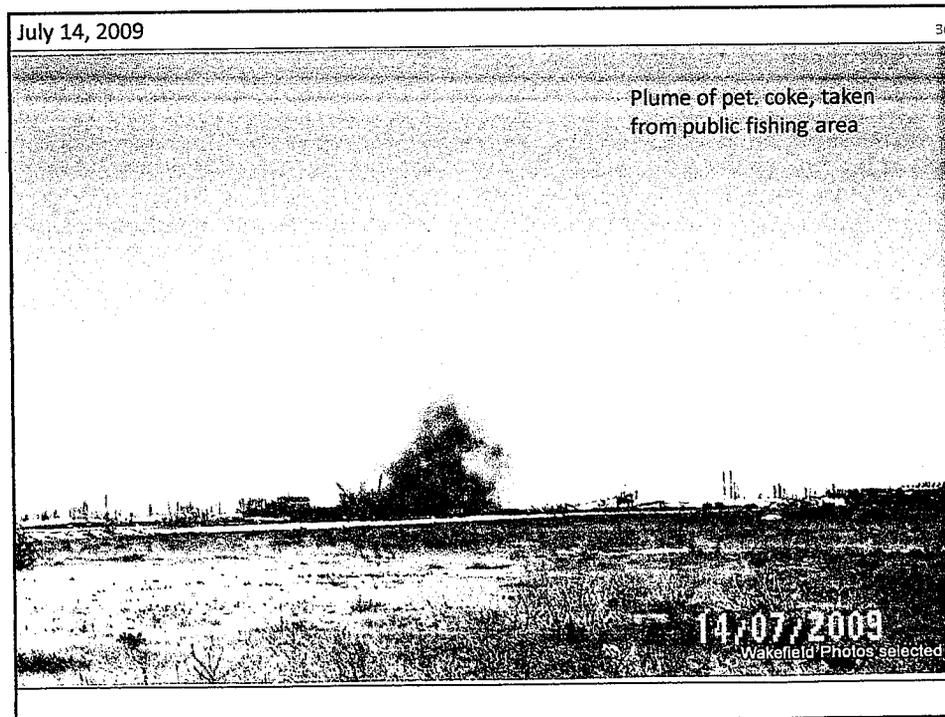
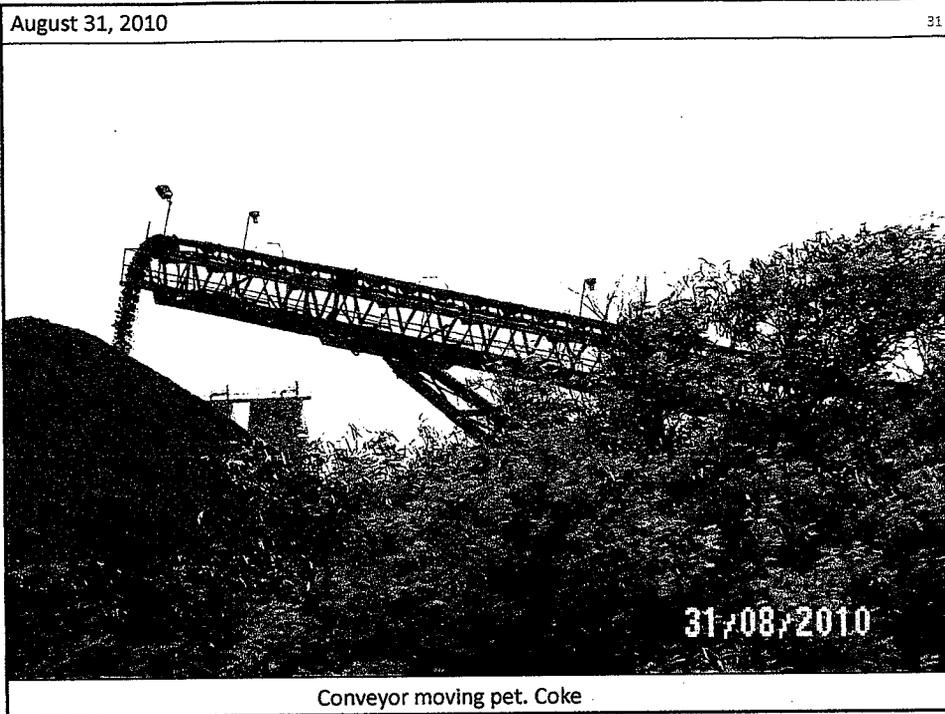


Wilson Wakefield,  
Individual Protestant

### APPENDIX A

- Photo No. 28: Pet Coke Dumping, Navigation at Joe Fulton Corridor, taken from Navigation Blvd entrance to bulk terminal, Oct. 7, 2010
- Photo No. 36: Plume of pet coke taken from public fishing area, July 14, 2009
- Photo No. 07: End of 109 car train, background grain elevators, taken from Joe Fulton Corridor
- Photo No. 31: Conveyor moving pet coke, taken August 31, 2010
- Photo No. 47: Photo taken October 2, 2010, at Lantana Square apartments, showing grain terminal , and St. Theresa Church and school.
- Photo No. 6: Photo taken July 19, 2010, showing ship loaded with hydrocarbons passing the proposed LBEC site.

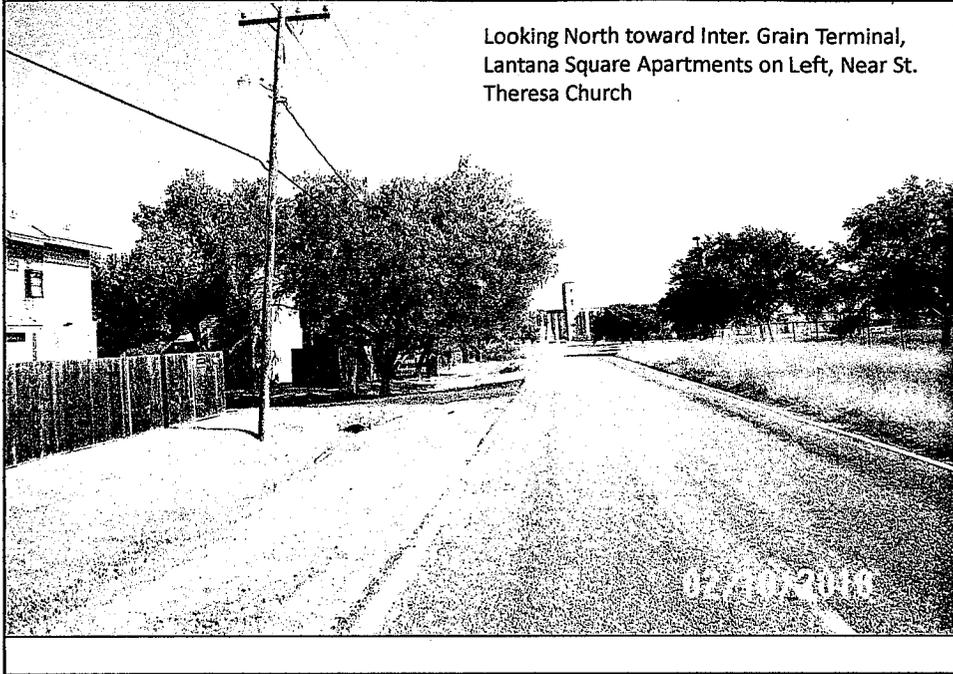




Oct. 02, 2010

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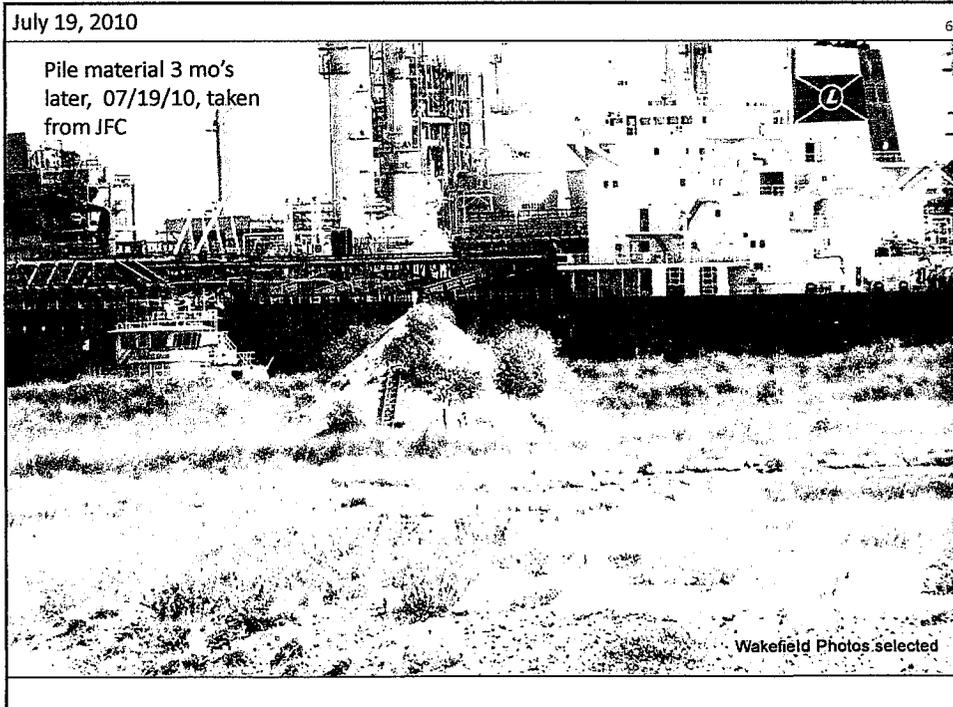
Looking North toward Inter. Grain Terminal,  
Lantana Square Apartments on Left, Near St.  
Theresa Church



July 19, 2010

6

Pile material 3 mo's  
later, 07/19/10, taken  
from JFC



Wakefield Photos selected