

SOAH DOCKET NO. 582-13-5205
TCEQ DOCKET NO. 2013-1191-AIR

APPLICATION OF CORPUS	§	BEFORE THE STATE OFFICE
CHRISTI LIQUEFACTION, FOR	§	OF
AIR QUALITY PERMIT NO. 105710	§	
AND PSDTX1306	§	ADMINISTRATIVE HEARINGS

EXECUTIVE DIRECTOR'S EXCEPTIONS AND PROPOSED REVISIONS

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COMES NOW, the Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) and files the Executive Director's Exceptions and Proposed Revisions to the Administrative Law Judge's (ALJ) Proposal for Decision and Order, and in support thereof shows the following:

A. Exceptions

1. Evidence related to Mr. Davidson.

The ED excepts to any discussion, findings, and conclusions regarding whether Mr. Davidson is an affected person. There is no evidence in the record regarding whether Mr. Davidson is an affected person. The only information in the record is the argument of counsel for Sierra Club at the preliminary hearing. The only other available information is the affidavit filed with Sierra Club's Motion to Supplement Witness List, which, as noted by the ALJs, is not part of the record. Therefore, the ED respectfully requests that Findings of Fact 32, 33, and 35 be deleted.

2. References to the Radius of Impact (ROI) and Significant Impact Levels (SILs) in the Determination of Personal Justiciable Interest.

The Executive Director excepts to any discussion, findings, or conclusions that a hearing requestor would have a personal justiciable interest simply by residing in the ROI (also referred to as the area of impact) or because the emissions from a project exceed a SIL. The ROI is the geographical area for which an applicant conducts the required air analysis for the NAAQS and PSD increment.¹ The SIL is the level of air contaminant concentration defined by the EPA as a concentration below which the air quality is not anticipated to degrade due to these emissions.² Simply because a hearing requestor has a residence within the ROI does not, in and of itself, create a personal justiciable interest. Similarly, simply because a project's emissions are above a SIL does not create a personal justiciable interest; rather, it would be an interest common to the general public. Therefore, the ED respectfully requests that the following sentence be deleted from page 13 of the PFD: "Although this may only indicate that a full impacts analysis is necessary, it does show a raised potential for impacts." Alternatively, the ED respectfully requests the sentence be modified to read: "The latter indicates that a full impacts analysis is necessary."

B. Proposed Revisions

Upon reviewing the Proposed Order and Findings of Fact and Conclusions of Law, the ED offers limited exceptions consisting of mainly typographical and technical

¹ Ex. ED-5 at 298.

² Ex. ED-31 at 972. TCEQ generally refers to the SIL as *de minimis*. *Id.*

corrections to the Proposed Order. Therefore, the ED respectfully requests that the ALJs make the following revisions:

1. Finding of Fact No. 43 should be revised as follows: "CCL performed air dispersion modeling, which was summarized in its November 2012 Air Quality PSD Modeling Protocol Report... ."
2. Finding of Fact 52 should be revised by deleting subparagraph "a" and renumbering the subsequent paragraphs. The reason for this change is that paragraph "a" is subsumed in paragraph "d" and, therefore, paragraph "a" is unnecessary.
3. Finding of Fact 54 should be corrected as follows: "TCEQ recommends using meteorological data from the Corpus Christi International Airport and from Victoria, Texas's upper air station for projects in San Patricio and ~~Nueces County~~ ies because the data is representative of the conditions at locations in ~~these counties~~ this county." The reason for the change is that the monitor is located in San Patricio County; the record evidences that the footprint of the proposed plant extends into both counties.
4. Finding of Fact 66 should be corrected as follows: "CCL performed air dispersion modeling of emissions of NO₂, CO, PM_{2.5}, and PM₁₀, ~~and ozone~~ from the CCL Project for the purpose of demonstrating compliance with the NAAQS and PSD increments." The reason for this correction is that modeling for ozone is done with photochemical modeling as reflected in Finding of Fact 105.
5. Finding of Fact 100 should be corrected as follows: "TCEQ guidance ~~requires~~ provides for the use of a screening technique to determine whether a proposed source will cause ozone exceedances in a local attainment area." The reason for this

correction is that the guidance requires the applicant to address ozone impacts and provides a screening technique for that purpose, but the guidance does not require the use of that screening technique in addressing ozone impacts.

C. Conclusion

Based on evidence admitted and disputed issues identified in the record, all procedures and analysis required for an air quality permit review were followed in accordance with applicable rules and guidance established by the TCEQ. Therefore the TCEQ ED respectfully requests that the ALJs accept the above exceptions and proposed revisions.

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on this 4th day of June, 2014, a true and correct copy of the foregoing document has been served upon all parties via electronic mail:

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