

SOAH DOCKET NO. 582-25-08210
TCEQ DOCKET NO. 2024-1222-MSW-E

EXECUTIVE DIRECTOR OF THE TEXAS	§	BEFORE THE
COMMISSION ON ENVIRONMENTAL	§	
QUALITY,	§	
Petitioner	§	
	§	STATE OFFICE OF
VS.	§	
	§	
CARBON SEQUESTRATION, INC.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

EXECUTIVE DIRECTOR’S REPLY TO RESPONDENT’S EXCEPTIONS AND BRIEF TO THE
PROPOSAL FOR DECISION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE WHITNEY STOEBNER

The Executive Director (“ED”) of the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) files this reply to Respondent’s written exceptions pursuant to the administrative law judge’s (“ALJ’s”) Proposal for Decision, issued on February 6, 2026.

I. Affidavit of Dr. James Gooding

The ED generally objects to Respondent’s exceptions to the extent they allege new facts, new legal arguments, and generally go beyond the scope of the Proposal for Decision (“PFD”), applicable law, and factual record, which closed on December 17, 2025. To the extent Respondent’s exceptions contain legal or factual arguments not made by Respondent in its written legal closing or reply, the ED respectfully requests the ALJ and Commission exclude them from their consideration. In particular, Respondent attached an affidavit of Dr. James Gooding, Respondent’s sole witness at the October 16, 2025, Evidentiary Hearing, which contained new factual testimony Respondent attempted to rely on in its argument. The time for submitting evidence to the record has passed and the ED has no opportunity to cross-examine Respondent’s witness on the new factual information alleged in the attached affidavit, or to call her own witnesses to rebut. During the Evidentiary Hearing, Respondent conducted direct examination of Dr. Gooding for over an hour¹ and Respondent was given the opportunity to re-direct. The record closed on December 17, 2025, and has not been reopened. Respondent made no identification or argument of good cause to reopen the record and no such good cause exists.

Additionally, the ED generally objects to Respondent’s exceptions to the extent they fail to make citations to the legal or factual record as such failures materially inhibit the ED’s ability to respond.

¹ Dr. Gooding’s substantive testimony begins at 1:37 and ends at 2:38, 582-25-08210_HOM Part 2.

II. Reply to Specific Exceptions

II.a. Introduction

Respondent claims, "the PFD errs in law and fact by narrowly interpreting 'recyclable material' to require one-to-one physical substitution of virgin materials in a tangible product" (Paragraph 2). Nowhere does the PFD make any legal or factual finding that "recyclable material" requires "one-to one physical substitution" and Respondent makes no citation to that effect. At no point in the hour of expert witness testimony during the evidentiary hearing did Respondent put on any evidence to explain how the waste wood brought to its Facility in the alleged production of a carbon dioxide removal credit ("CORC") substituted a raw or virgin material **of any kind in any amount**. The PFD did not impose a "one-to-one" substitution standard, it accurately found that, based on the factual record, the input waste wood used in the production of a CORC is not substituting **any** raw or virgin material and therefore is not "recyclable material" under the applicable rules and statutes. Further, when asked whether any raw or virgin material is being substituted in the production of a CORC, Dr. Gooding, Respondent's own expert on CORCS, replied, without any qualification or elaboration, "No." (582-25-08210_HOM Part 2 at 2:46:30)². Finally, Respondent re-directed after cross and declined to ask any follow-up questions regarding Dr. Gooding's response to the raw or virgin material substitution question. Having failed to do so in its written legal closing or its reply to the ED's written legal closing, Respondent now argues Dr. Gooding's response to the above question "was a TCEQ-statute-specific legal question." What relevance this supposed distinction has to any material legal or factual issue in this matter is unclear, but the question posed to Dr. Gooding did not contain any citation to any rule or statute and was presented in plain language, to which Dr. Gooding provided a clear, unqualified, plain-language response. Even if this new argument had any merit, Respondent had its opportunity to make legal arguments in its written legal closing and reply. Exceptions are limited to misapplications of the factual record, law, and legal arguments already made, not an invitation to relitigate.

Respondent further claims, "the PFD overlooked CSI's reliance on its 2022 NOI approval and the ongoing environmental oversight provided by the site trust" (Paragraph 3). These considerations were not overlooked by the PFD; they are irrelevant to any material legal or factual issue presented by this case. Respondent has made no legal argument as to how either of these factual allegations tend to disprove the ED's alleged violations or prove any affirmative defense. Respondent's allegation of "reliance" on the 2022 NOI has already been discussed at length in the ED's reply to Respondent's legal closing and does not merit further discussion. "Ongoing environmental oversight" of any nature or magnitude by a "trust" does not exempt Respondent from any of the relevant rules and statutes at issue in this case and Respondent has made no argument to that effect.

II.b. Exception to findings on "Recyclable Material" and No Replacement of Virgin Materials

Respondent states, "during the hearing and in subsequent briefs, the PFD focused on the absence of CSI-Hardin's replacing, on a one-to-one basis, virgin or raw materials during the production of CORCs . . . the imposition of a 1-1 substitution requirement (that CORC production must always displace raw or virgin material) effectively writes the phrase "may

² The exact question and answer from the record is as follows: "Mr. Pearson: 'What raw or virgin material is being substituted by the waste wood used in association with respondent's sale of CORCS? Is the wood that's being used in the connection with the sale of CORCS substituting any raw or virgin material that you can identify?' Dr. Gooding: 'No.'"

otherwise be produced" out of the statute" (Paragraph 6). Repeating its misstatement that the PFD imposed a "one-to-one substitution requirement," Respondent further alleges evidence presented at the evidentiary hearing and subsequent legal discussion in briefings were limited to this characterization, with no citation to the record, briefings, or PFD. The record and legal briefings in this matter do not contain a single mention, either explicit or implied, of a "one-to-one substitution requirement" of raw or virgin material for "recyclable material." Because there is no merit to Respondent's claim that the PFD imposes a "one-to-one substitution requirement," there is no merit to Respondent's argument that the PFD's findings read "may otherwise be produced" out of the applicable statute. Respondent's argument is a plain misrepresentation of prior proceedings and was not made in either its written legal closing or its reply to the ED's written closing.

Paragraphs 8 and 9 go on to make additional legal and factual arguments not found in Respondent's legal closing or reply. Here, and throughout the written briefings submitted over the course of this matter, Respondent appeals to the generalized purpose of the Solid Waste Disposal Act to "encourage the efficient management of municipal solid waste" and "enhance the quality of the environment." Respondent suggests that because its activities are (allegedly) "good" for the environment in some general sense, it is exempt from the Texas rules and statutes it was found to have violated in the PFD. Arguments regarding legislative intent of a particular act or statute are only relevant to resolve ambiguities in the text. Respondent failed to identify **any** ambiguity in the relevant rules or statutes. None exists. Respondent asks the ALJ and Commission to regulate on the basis of ad-hoc assessments in which specific, narrowly-tailored rules can be nullified on the basis of a finding that the activity in some vague, generalized sense "encourages the efficient management of municipal solid waste" or is "good" for the environment. These directives, on their own, contain little, if any, useful substantive guidance for specific enforcement matters. In its decades of operation, TCEQ has never regulated in the way Respondent suggests, and it should decline to do so here.

Respondent's claim, beginning in Paragraph 11, that there are raw or virgin materials the waste wood at its facility is substituting in its production of CORCs, was not argued in either of its closing legal briefings, is beyond the scope of exceptions, and should accordingly be excluded. Further, in paragraph 13, Respondent cites not only to evidence not admitted into the record, but evidence **created after the date of the October 16, 2025, evidentiary hearing.**³ Respondent fails to provide any analysis demonstrating how the "provisions" upon which it relies describe or identify a raw or virgin material that may be used in the production of the CORCs made at its facility. Respondent gestures toward "implied virgin timber sources," "primary feedstock," material "derived from processing of virgin fibres," "cultivated on agricultural land," and other materials or categories that fail to even vaguely suggest characteristics consistent with raw or virgin materials. No terms are defined. "Feedstocks" are not limited to raw or virgin materials and in the recycling context, are wastes, primary or otherwise. A myriad of wastes across industries are created as a by-product of "processing virgin [materials]" or "cultivated on agricultural land." Further, the use of non-waste material would contradict the core purpose of the CORCs produced by Respondent. As described by Dr. Gooding, the CORCs sold by Respondent represent removal of CO₂ from the atmosphere by sequestering carbon via **disposal through burial as opposed to disposal through burning.**⁴ The sequestered CO₂ represented by the CORC is the difference between the CO₂ that would have

³ Respondent cites to Biomass Sourcing Criteria v1.2, approved November 27, 2025, over a month after the evidentiary hearing in this matter.

⁴ 582-25-08210_HOM Part 2 at 2:44:21

been released through burning versus burial.⁵ If raw or virgin timber is buried, **carbon is not sequestered** in accordance with the requirements of Respondent's CORC. The wood must be a waste destined for disposal through burning for there to be any sequester mechanism through burial. The burial of virgin, non-waste timber or other material that Respondent now suggests not only fails to conserve natural resources, it does the opposite by consuming trees so they can sit in the ground for 100 years, serving no purpose other than to facilitate the sale of an abstract, digital asset. Even if the arguments and evidence Respondent now presents were timely, they have no merit and contradict the testimony of its own expert witness at the evidentiary hearing (582-25-08210_HOM Part 2 at 2:46:30). To conclude, Respondent presents conclusory, analysis-free assertions that were not argued in its closing or reply, accompanied by "evidence" absent from and contradicted by the record to support its contention that Finding of Fact No. 18 and Conclusion of Law No. 15 are in error. Respondent's arguments are neither timely nor meritorious and accordingly, the ALJ and the Commission should reject Respondent's proposed modifications in paragraph 17.

II.c. Exception to Findings on Storage Timelines

Respondent's objections to Finding of Fact and Conclusion of Law No. 14 repeat arguments fully explored in both parties' closings and replies and presents nothing that warrants further discussion. Accordingly, the ALJ and Commission should reject Respondent's proposed modifications in paragraph 20.

II.d. Exception to Findings on Unauthorized Disposal

Respondent's objection to Findings of Fact Nos. 22-23 and Conclusions of Law Nos. 16-17 are predicated on the merit of its prior arguments. For reasons already discussed, no such merit exists and accordingly, the ALJ and Commission should reject Respondent's proposed modifications in paragraph 22.

II.e. Exception to Findings on Failure to Notify

Respondent's objections to Conclusion of Law No. 18 repeat arguments fully explored in both parties' closings and replies and presents nothing that warrants further discussion. Accordingly, the ALJ and Commission should reject Respondent's proposed modifications in paragraph 25.

II.f. Exception to Remediation Recommendations

Respondent's objections to the ALJ's recommended corrective action make new arguments not made in either its legal closing or reply. The Executive Director's recommended corrective action were pled in the Petition, which Respondent has had notice of since September 27, 2024. Respondent's legal closing and reply contained no substantive objection or alternative recommendations for corrective action. Respondent's claim of "no actual environmental harm" is contradicted by the record.⁶ The "protections" afforded by the trust to which Respondent refers are wholly speculative, do not address the ongoing environmental harm or threat of harm, contingent on funding (that does not exist) sustaining for at least 100 years, do not provide Respondent an exemption from the rules it has been found to have violated, and is generally irrelevant to any material legal or factual question in this matter. Respondent's claim

⁵ 582-25-08210_HOM Part 2 at 2:45:44.

⁶ 582-25-08210_HOM Part 1 at 1:47:09, 2:14:26, and 3:10:52 and 582-25-08210_HOM Part 2 at 00:59:15.

that implementing the proposed corrective action would “cause affirmative harm” is offered without evidence. Respondent’s claim that the ED did not calculate actual remediation costs to Respondent is irrelevant as an objection to the proposed corrective action. Regulated entities are under a continuing obligation to be in compliance with all state rules and statutes pertaining to regulated activity. To the extent Respondent failed to comply with those rules and statutes, it is responsible for all costs required to come into compliance. Cost of compliance is not and has never been a basis for exemption from required corrective action. Respondent’s suggestion that it be required to “update the NOI” is meritless: the ED’s core position, affirmed by the PFD, is that Respondent’s process **cannot be authorized by a recycling NOI**. Respondent’s process requires the waste wood to be buried at its facility for at least 100 years, rendering it fundamentally incapable of operating without the long-term storage of waste. The time for Respondent to secure a municipal solid waste permit was prior to commencing operations, as acknowledged by its own expert witness.⁷ The unauthorized disposal of over 4,000 tons of waste has been ongoing at Respondent’s facility for years, noncompliance will be ongoing during the pendency of a permit application, and the prospect of Respondent securing a permit is speculative. The ED’s recommended corrective action ensures the ongoing environmental harm and threat of harm posed by Respondent’s unauthorized activity will be remedied and Respondent provides no good cause or justification for its proposed alternatives. Accordingly, the ALJ and Commission should reject Respondent’s proposed modifications in paragraph 27.

III. “Argument in Support”

a. Equitable Estoppel / Detrimental Reliance

Respondent repeats its claim that it “relied” on the 2022 NOI acceptance. As the ED argued in her Reply to Respondent’s Written Closing, “Respondent cannot cry fowl that it ‘relied’ on an NOI Acceptance Letter that was issued on the basis of **inaccurate information provided by Respondent** and contained waste processing timeline limitations to which it clearly could not adhere. Respondent told TCEQ it would engage in composting at its Facility. That was not and has never been true.”⁸ Respondent’s objections repeat arguments fully explored in both parties’ closings and replies and presents nothing that warrants further discussion.

b. The PFD’S Narrow View Stifles Innovation

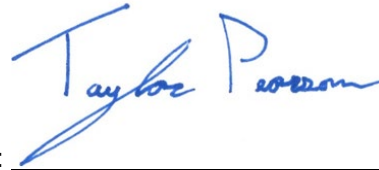
Respondent complains the PFD “would render any novel carbon-removal process ineligible for recycling classification simply because the resulting product (a CORC) is not a traditional physical commodity.” Operating under a recycling NOI is not a necessity for Respondent’s process or any other “novel carbon-removal process,” Respondent makes no argument to that effect, and failed to make any such argument in its legal closing or reply. Recycling NOIs are limited to processes that can operate without the long-term accumulation of waste at the facility. Respondent’s process requires it to bury waste at its facility for at least 100 years. Therefore, it is ineligible to operate under a recycling NOI. Notwithstanding the fact that the waste wood at Respondent’s facility is not “recyclable material,” long-term storage or disposal of waste requires a municipal solid waste permit. The requirement to secure such a permit does not “stifle innovation” or foreclose the ability of carbon sequestration projects to operate.

⁷ 582-25-08210_HOM Part 2 at 2:39:30.

⁸ Executive Director’s Reply to Respondent’s Written Closing at 7.

IV. Conclusion

Respondent's exceptions make new factual and legal arguments not made in its written closing or reply, repeat arguments already resolved by the PFD, make claims with no citation to the record, attempt to admit new evidence into the record after it has closed, and cite to evidence created after the date of the evidentiary hearing. Notwithstanding the above deficiencies, Respondent provides no basis or justification for amending any of the findings of fact or conclusions of law in the PFD. Accordingly, the ED respectfully requests the ALJ and Commission reject all of Respondent's proposed modifications.



By: _____
Taylor Pearson
State Bar of Texas No. 24102342
TCEQ Office of Legal Services
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
P: (512) 239-3400
E: taylor.pearson@tceq.texas.gov

Certificate of Service

I hereby certify that on this 6th day of March, 2026, the original of the foregoing "Executive Director's Reply to Respondent's Exceptions and Brief to the Proposal for Decision" ("Reply") was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas and with the State Office of Administrative Hearings, Austin, Texas to the Honorable Whitney L. Stuebner.

I further certify that on this day a true and correct copy of the foregoing Reply was mailed via Certified Mail, Return Receipt Requested Article No. 7004 1350 0002 7555 0518, postage prepaid, to:

Christopher Knop, President and Attorney
Carbon Sequestration, Inc.
4801 Woodway Drive Suite 335W
Houston, Texas 77056

I further certify that on this day a true and correct copy of the foregoing Reply was electronically delivered to Jessica Anderson, TCEQ Office of Public Interest Counsel, at Jessica.Anderson@tceq.texas.gov and to Christopher Knop, President and Attorney for Respondent, at cknop@knoplawfirm.com.



Taylor Pearson, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality