



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

September 29, 2010

Mr. Mark Vickery, P.G.
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Re: White Stallion Energy Center, PSD-TX-1160, PAL 26, and HAP 28, Matagorda County, Texas.

Dear Mr. Vickery,

The Environmental Protection Agency (EPA) has strong concerns about the public health and environmental impacts of the planned White Stallion Energy Center, based on a review of the proposed air quality permits. EPA previously wrote to TCEQ on several occasions about this matter, including on April 14, 2009, April 20, 2009, and February 10, 2010. Some of EPA's concerns included, but were not limited to the following summary:

- EPA expressed concerns about the lack of a proper demonstration that the proposed facility will not cause or contribute to violations of the National Ambient Air Quality Standard (NAAQS) for ozone, and requested that the applicant generate a modeling protocol and provide a copy to EPA for review. EPA indicated that it might be compelled to consider available Clean Air Act enforcement authorities or objecting to the subsequent Title V permit if an appropriate ozone analysis was not conducted. (April 14, 2009 - Item #5; February 10, 2010 - Item #1).
- EPA indicated that there were problems with the issuance of a federal plant-wide applicability limit (PAL) to the facility. (February 10, 2010 - Item #2).
- EPA asked for the record to support the use of PM₁₀ as a surrogate for PM_{2.5}. (February 10, 2010 - Item #3).
- EPA asked the TCEQ and applicant to specifically address and provide a rationale that considered IGCC and clean fuels options in the determination of Best Available Control Technology (BACT) emissions limitations. (February 10, 2010 - Items #4 and #5).

- EPA provided information for case-by-case MACT determinations regarding the use of wet FGD and fabric filters to control certain HAP emissions at a similar facility. (April 20, 2009 - Items #1 and #2).

In addition, EPA has finalized new NAAQS standards, and federal law, the Texas SIP, and PSD regulations require that emissions from construction or operation of a permitted facility will not cause, or contribute to, a violation of any NAAQS:

- EPA proposed a revision to the NAAQS for nitrogen dioxide (NO₂) on July 15, 2009 (74 FR 34404), finalized the standard on February 9, 2010 (75 FR 6474), and the standard became effective on April 12, 2010.
- EPA proposed a revision to the NAAQS for sulfur dioxide (SO₂) on December 8, 2009 (74 FR 64810), finalized the standard on June 22, 2010 (75 FR 35520), and the standard became effective on August 23, 2010.

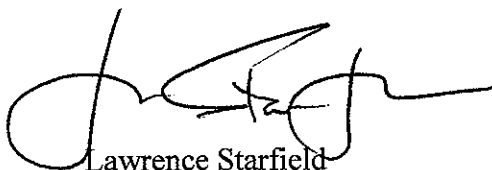
The TCEQ should transmit for review to EPA a copy of an amended permit application or other records which contain demonstrations that the proposed facility will not contribute to NO₂ and SO₂ NAAQS violations, and provide notice to EPA of TCEQ's action related to the consideration of such information. Neither EPA nor the public have had their rights under the Clean Air Act to review the demonstrations of compliance for these standards.

Because of the deficiencies identified in our written correspondence and the lack of required NAAQS demonstrations, if TCEQ were to issue the permits as they are proposed they would not be consistent with federal requirements and the Agency might have to consider available Clean Air Act authorities under Sections 113 and 167, and/or object to the subsequent Title V permit.

EPA is requesting that TCEQ withhold action on this permit application for the next 90 days, so that TCEQ and EPA can discuss the permit record. In addition, I would propose that we have TCEQ and applicant staff communicate closely with their EPA counterparts on the technical demonstrations needed to show that this facility will not adversely impact public health and will in fact protect the National Ambient Air Quality Standards.

Please contact me at (214) 665-2100, or Carl Edlund of my staff at (214) 665-7200, if you should have any questions concerning this matter.

Sincerely yours,



Lawrence Starfield
Deputy Regional Administrator

Enclosures

cc: TCEQ Commissioners
Richard Hyde, TCEQ
Les Trobman, TCEQ



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

APR 14 2009

Office of the Chief Clerk (MC-105)
Texas Commission on
Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

RE: Prevention of Significant Deterioration (PSD) Draft Permit, White Stallion Energy Center, PSD-TX-1160, HAP28, and PAL26, Matagorda County, Texas

To Whom It May Concern:

We have reviewed the draft Prevention of Significant Deterioration (PSD) permit for the White Stallion Energy Center located in Matagorda County, Texas. We received it in our office on March 13, 2009. The draft permit was evaluated to ensure consistency with the Texas PSD State Implementation Plan (SIP) and Federal Clean Air Act requirements. Our comments on the permit are enclosed.

We look forward to working with the Texas Commission on Environmental Quality (TCEQ) to address the issues identified in our comments and to ensure that the final permit is consistent with the requirements of the Texas PSD SIP. This letter is not a final position by the U.S. Environmental Protection Agency (EPA) concerning the disposition of the application and draft permit. Please contact me at (214) 665-7250, or Stephanie Kordzi of my staff at (214) 665-7520, if you have questions. Thank you for your cooperation.

Sincerely yours,

A handwritten signature in black ink that reads "Jeff Robinson".

Jeff Robinson
Chief
Air Permits Section

Enclosures

cc: Mr. Randy Hamilton
Texas Commission on Environmental Quality

Mr. Steve Hagle
Texas Commission on Environmental Quality

ENCLOSURE

Permit

1. Page 18, Permit Condition 32 - We recommend that TCEQ consider requiring particulate matter (PM) Continuous Emission Monitoring Systems (CEMS) to monitor filterable PM. PM CEMS was mentioned in the Preliminary Determination Summary (See Comment Number 4 below). PM CEMS measures the pollutant of interest, which periodic performance testing also measures, but it provides a greater degree of confidence that the PM control device is operating as intended. We believe PM CEMS for filterable particulate matter have been adequately demonstrated, and we are aware of a number of successful applications in industries such as pulp and paper, hazardous waste incineration, copper smelting, and no fewer than six electric generating units. We are aware of additional plans for installation of PM CEMS on electrical generating units. The capital and operating costs of PM CEMS are comparable to those of Continuous Opacity Monitoring Systems (COMS). Also, we note that revisions to the New Source Performance Standards for electric utility boilers allow PM CEMS to be used in lieu of opacity limits and COMS. Direct, continuous measurement of the pollutant of concern, as can be provided only by PM CEMS, will help ensure proper monitoring of the PM control equipment to the source, the environmental agency, and the public.
2. Page 20, Permit Condition 39.C. – The permit condition states that compliance with the Plantwide Applicability Limit (PAL) will be demonstrated by using CEMS. However, CEMS are not required for PM monitoring. Please reconcile.
3. Page 20, Permit Condition 39.D. – The permit states that the PAL is subject to the requirements of 30 Texas Administrative Code (TAC) Chapter 116, Subchapter C. However, EPA is currently reviewing these state regulations and has not yet taken action to approve or disapprove these regulations into the Texas State Implementation Plan (SIP). Accordingly, Texas must demonstrate that all emissions units at this source continue to meet all requirements of the currently approved SIP, including the requirements of any existing permits issued under the approved SIP. If any requirement of an existing permit is changed, the record for this permit action must demonstrate that such change meets the applicable SIP approved requirements in 30 TAC section 116.116. In addition, we strongly encourage TCEQ to ensure that all facets of EPA's PAL provisions are adequately addressed by this permit. (Please see *Federal Register (FR)*, 67 FR 80186, December 31, 2002.)

Preliminary Determination Summary

4. Page 9, BACT for Emissions during Startup/Shutdown – Please have the permittee forward a final copy of the final Startup/Shutdown written plan, when prepared.

5. Page 13, Section VII, Ozone Analysis – The EPA is concerned about the TCEQ guidance referenced by the applicant in the Modeling Report that was submitted to TCEQ regarding assessing the ozone impacts from the proposed unit in its PSD permit application. Specifically, it was determined that the location is ozone neutral. If the TCEQ guidance that was used is based on the Scheffe Point Source Screening Tables, then EPA has commented and provided information to TCEQ on the inaccuracy of using Scheffe Point Source Screening Tables for determining ozone ambient impacts in previous permit comment letters. While Scheffe tables have been previously used in PSD permit applications to assess ozone impacts in the absence of other accepted techniques, use of the Scheffe Point Source Screening Tables or similar screening processes are not EPA-approved PSD modeling protocols.¹ TCEQ Air Quality Modeling Guidelines establish a process by which the permit applicant communicates with TCEQ staff and develops a modeling protocol that will be followed. We could not see where a modeling protocol was developed or submitted by White Stallion. Please forward it to our office if it was prepared. The TCEQ has numerous nitrogen oxide control strategies throughout East Texas and in the Houston-Galveston-Brazoria (HGB) area to reduce ozone levels, but the comment that the proposed source, considering its proposed location, is ozone neutral is in direct conflict with control strategies developed to reduce ozone in the nearby HGB Nonattainment Area. EPA Region 6 will consider available Clean Air Act enforcement authorities or objecting to the subsequent Title V permit for this facility if an appropriate ozone analysis is not conducted for this facility. In addition, since this facility is proposed immediately outside the HGB non-attainment area, please provide EPA appropriate air quality modeling for ozone impacts that clearly demonstrates what the project's impact will be at specific monitors in the HGB area and that the construction of the facility will not significantly impact ozone levels at the HGB area. At this point, the only modeling technique that would seem technically appropriate for this source would be a CAMx based analysis using available modeling databases. We look forward to working together with the source in developing a modeling protocol for the ozone analysis. Please remember that EPA does not have an established significant impact level for ozone and TCEQ should not assume that the threshold for PSD purposes is an impact of 2.0 parts per billion or more.

¹ We have enclosed the Richard Scheffe letter on the Scheffe Point Source Screening Tables for TCEQ and the source's reference



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

JUL 28 2006

Rec'd
SP - AR
AUG - 3 2006

Dick _____
Staff _____

Ms. Abigail Dillen
209 South Willson Avenue
Bozeman, Montana 59715

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

Dear Ms. Dillen:

This letter is in response to your inquiry regarding applicability of the Scheffe Point Source Screening Tables.

I developed the screening tables in 1988 as a screening test to estimate the contribution to ambient ozone associated with increased non-methane organic carbon (NMOC) emissions arising from new or modified point sources. The tables never achieved a level of EPA certification associated with EPA guideline models and consequently were not endorsed by the Agency. After publication (non peer reviewed literature) of the tables in 1989, the American Petroleum Institute enlisted renowned atmospheric modeling experts, Drs. John Seinfeld and Panos Georgopoulos of the California Institute of Technology, to review the technique. Based on their input and our own analysis, the EPA decided at that time that the tables did not adhere to an adequate level of scientific credibility to be recommended for their intended purpose.

Ozone science has advanced markedly since 1988 with substantial improvements in the characterization of emissions, meteorological, and atmospheric chemistry processes, paralleling an equivalent improvement in computational processing capability, all of which constitute the principal features of a modeling framework. As a result, the Scheffe method, which was deemed "not adequate" in 1989, would be even less adequate today.

Please do not hesitate to contact me (919-477-7955) regarding any further questions.

Sincerely,

Richard D. Scheffe, PhD
Senior Science Advisor
OAQPS, EPA

cc: Richard Long, Region 8
Tom Curran
Valerie Broadwell



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

APR 20 2009

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

RE: White Stallion Energy Center, LLC (WSEC), Permits 86088, HAP28, PAL26 and
PSD-TX-1160, Matagorda County, Texas

To Whom It May Concern:

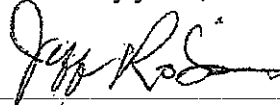
We appreciate the opportunity to provide you with information in your efforts to establish a case-by-case maximum achievable control technology (MACT) determination for the proposed construction of the White Stallion Energy Center, LLC (WSEC), 1200 megawatt (MW) power plant, Matagorda County, Texas. The Texas Commission on Environmental Quality (TCEQ) is the permitting authority required to make the section 112(g) MACT determination for the construction of the WSEC. However, consistent with the U.S. Environmental Protection Agency's (EPA) regulations implementing section 112(g), EPA can provide information to permitting authorities if that "information can be expeditiously provided by the Administrator." See 40 Code of Federal Regulations (CFR) §63.43(d) (requiring, among other things, that the 112(g) limit be based on "available information") 40 CFR § 63.41 (defining "available information"). Consistent with these provisions, we are providing the following information for you to consider as you develop the case-by-case section 112(g) MACT standard for the WSEC.

- Item 1. With respect to the proposed MACT to control emissions of Hydrogen Chloride (HCL) from the four circulating fluidized bed (CFB) boilers, in Permits 86088, HAP28, PAL26 and PSD-TX-1160, which we received in March 2009, WSEC proposes dry flue gas desulfurization (FGD) and fabric filter (FF). One example we have identified is a January 2008 permitting action for a petroleum coke, coal, and biomass fired, 230 MW, CFB boiler unit by the State of Louisiana at Louisiana Generating LLC's, Big Cajun I Power Plant (Unit I) which will utilize dry FGD and FF technology to control emissions of HCL.
- Item 2. With respect to the proposed MACT to control emissions of Hydrogen Fluoride (HF) from the four CFB boilers, in Permits 86088, HAP28, PAL26 and PSD-TX-1160, which we received in March 2009, WSEC

proposes dry FGD and FF. One example we have identified is a January 2008 permitting action for a petroleum coke, coal, and biomass fired, 230 MW, CFB boiler unit by the State of Louisiana at Louisiana Generating LLC's, Big Cajun I Power Plant (Unit I) which will utilize dry FGD and FF technology to control emissions of HF.

The TCEQ may obtain additional information concerning the above-referenced permitting actions to assist it in the MACT determination for the proposed WSEC plant. See 40 CFR 63.41. Should TCEQ have any questions about the requirements of Section 112(g) of the Clean Air Act, please contact me or Rick Barrett of my staff at (214) 665-7227.

Sincerely yours,



Jeff Robinson
Chief
Air Permits Section

cc: Ms. Toni Oyler
Texas Commission on Environmental Quality

Mr. Steve Hagle
Texas Commission on Environmental Quality



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
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DALLAS, TX 75202-2733

FEB 10 2010

Mr. Richard Hyde, P.E.
Deputy Director
Office of Permitting and Registration
Texas Commission on
Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Re: White Stallion Energy Center, PSD Permit Nos. PSD-TX-1160, PAL 26, and HAP 28,
Matagorda County, Texas

Dear Mr. Hyde:

Enclosed is the U.S. Environmental Protection Agency (EPA) analysis of the above-referenced permit actions. We performed this analysis in light of the recent issuance of the Texas Commission on Environmental Quality (TCEQ) Response to Comments (RTC) regarding this matter on October 2, 2009, and the upcoming "Hearing on the merits", scheduled to begin on February 10, 2010. Our comments focus on aspects of the permit actions that appear to be inconsistent with the requirements of the federal Clean Air Act and the implementing regulations, including the federally-approved Texas State Implementation Plan (SIP).

If the issues detailed in this letter are not appropriately responded to by TCEQ prior to final resolution of this permitting action, EPA may consider using Clean Air Act authorities to object to the subsequent Title V operating permit for this facility, or other remedies under the statute. Please contact me at (214) 665-7200, or Jeff Robinson of my staff at (214) 665-6435, if you should have any questions concerning this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "C. Edlund".

Carl E. Edlund, P.E.
Director
Multimedia Planning
and Permitting Division

Enclosure

cc: TCEQ Commissioners
Mark Vickery, TCEQ Executive Director
Steve Hagle, TCEQ

ENCLOSURE

I. Air Quality Impacts Analysis

We commented on the draft permit for the proposed White Stallion facility on April 14, 2009. In the Executive Director's response to comments (RTC), the TCEQ disagreed with our comments that photochemical modeling for ozone was needed to demonstrate that the proposed source would cause or contribute to violation of the National Ambient Air Quality Standards (NAAQS). TCEQ also disagreed with our comment that the ozone analysis performed by the applicant was in direct conflict with NOx control strategies developed to reduce ozone in the nearby Houston, Galveston, Brazoria (HGB) non-attainment area. TCEQ indicated if an evaluation of ozone impacts on a non-attainment area is needed, that the non-attainment SIP process is best suited for such an evaluation. As you are aware, 40 CFR § 51.165 and 51.166 requires permitting authorities to demonstrate that the proposed source will not cause or contribute to violation of the ozone NAAQS per 40 CFR 52.21(k). However, since this facility is proposed immediately outside the HGB non-attainment area, we continue to believe that appropriate air quality modeling must be conducted to clearly demonstrate that the project will not negatively impact ozone concentrations at specific monitors in the HGB area.

The TCEQ also stated in its RTC that EPA has no preferred model to determine impacts from a single source; no requirement for photochemical modeling; and no requirement for applicant to conduct regional ozone analysis. Our PSD regulations at 40 CFR § 51 Appendix W 5.2.1 recommend models for evaluating ozone impacts. Specifically, control agencies with jurisdiction over areas with ozone problems are encouraged to use photochemical grid models such as Models-3/Community Multi-scale Air Quality (CMAQ) modeling system to evaluate the relationship between precursor species and ozone. In our April 14, 2009 comment letter to TCEQ on the draft permit we also discussed potentially using a CAMx based analysis, since TCEQ has multiple episode databases that evaluate ozone levels in the Houston area. Appendix W 5.2.1 also recommends that permitting authorities consult with EPA on estimating the impacts of individual sources to determine the most suitable approach for estimating ozone impacts on a case-by-case basis. In an effort to determine that the proposed source will not cause or contribute to an air pollution in violation of ozone NAAQS standard, we have offered to work on a modeling protocol with TCEQ for this facility. To date, neither TCEQ nor the applicant have elected to consult with us on use of a modeling protocol that would estimate potential ozone impacts from the proposed source despite EPA's direct comment to TCEQ on this matter.

In addition, the TCEQ RTC expressed concern that the scope of the modeling and associated review required for multiple episodes and monitors (and potential control scenarios for any monitors currently above the ozone standard) would be costly, take up to a year to complete, and still not provide information to definitively address EPA's concerns, since the EPA does not have an established significant impact level (SIL) for ozone. Other permit applicants and permitting authorities in Region 6 (including TCEQ) have worked with us to conduct photochemical modeling to demonstrate that a proposed source would not cause or contribute to a violation of the ozone NAAQS. These projects have typically only taken a few months to

conduct and the cost, when a contractor has been used, is minimal with most analyses costing less than the other criteria pollutant modeling.

TCEQ also stated that EPA does not have a requirement for photochemical modeling of SIP attainment demonstration modeling techniques for NSR permitting purposes for sources of VOC or NO_x within 100 and 200 kilometers, respectively of these precursors outside a non-attainment area. However, the TCEQ has developed multiple ozone SIPs where sources of NO_x, that were at least 100-200 km outside the non-attainment areas, have been controlled to yield ozone decreases in the non-attainment areas (DFW and HGB SIPs in 2000/2001, DFW SIP 2007). TCEQ also commented that winds would not transport the proposed source's emissions to the HGB nonattainment area, but considering the proximity of the source to the HGB area, we are concerned because previous modeling episodes have had multiple days with winds from the west that could transport emissions towards the HGB nonattainment area.

We remain extremely concerned about the TCEQ guidance referenced by the applicant in the Modeling Report that was submitted as an assessment of the ozone impacts from the proposed source in its PSD permit application. Based on the results of this guidance, TCEQ and the applicant determined that the project is "ozone neutral." In the past, TCEQ has relied upon large NO_x reductions to decrease ozone levels in ozone SIPs for the HGB and DFW areas. The current TCEQ approach for this permit relies upon science that assumes that the source has to emit VOCs at a sufficient level to chemically react with the source's NO_x emissions to generate ozone. We disagree that VOC emissions have to be co-emitted at the source to cause impacts on ozone levels. Although TCEQ indicated this analysis is not based on the Scheffe Point Source Screening Tables for determining ozone ambient impacts, the approach and interpretation does not clearly demonstrate that the source will not adversely impact control strategies developed to reduce ozone in the nearby HGB non-attainment area. TCEQ and the applicants should utilize a technically appropriate modeling technique and should work with us (in accordance with PSD regulations and Appendix W) to determine whether a potential impact from this facility would cause or contribute to a potential violation of the ozone NAAQS standards or impacts on nearby non-attainment areas. TCEQ has not provided us a demonstration that this facility will not negatively impact ozone levels in Matagorda County or the HGB non-attainment area. If such modeling has been prepared by the applicant or TCEQ, we request that it be made available to us and the public for review.

II. Plantwide Applicability Limit (PAL)

Since EPA has not approved TCEQ's PAL provisions into the SIP and proposed disapproval of such provisions on September 23, 2009, (74 FR 48474), any PAL permit issued by TCEQ to a new major stationary source may be considered a non-SIP-approved permit by EPA. We identified in our Federal Register notice that PAL permits can only be issued to existing major stationary sources, which precludes applicability of a PAL to a new major stationary source, as required under 40 CFR §§ 51.165(f)(1)(i) and 51.166(w)(1)(i). Without at least 2 years of operating history, a potential source like White Stallion Energy Center has not established actual emissions to facilitate development of a PAL.

required under 40 CFR §§ 51.165(f)(1)(i) and 51.166(w)(1)(i). Without at least 2 years of operating history, a potential source like White Stallion Energy Center has not established actual emissions to facilitate development of a PAL.

III. Particulate Matter (PM) 2.5

We reviewed the TCEQ's Response No. 4 in the RTC filed on October 2, 2009, regarding PM_{2.5}. However, we have concerns regarding TCEQ's reliance on the PM₁₀ surrogate policy. It is now necessary to provide a demonstration to support the use of PM₁₀ as a surrogate for PM_{2.5}. The applicant should submit a revised application or demonstration addressing PM_{2.5} emissions. See, *In re Louisville Gas and Electric*, Petition No. IV-2008-3 (Order on Petition). The additional information should either address PM_{2.5} emissions directly or show how compliance with the PSD requirements for PM₁₀ will serve as an adequate surrogate for meeting the PSD requirements for PM_{2.5} in this specific permit, after considering and identifying any remaining technical difficulties with conducting an analysis of PM_{2.5} directly. The permit record must reflect a demonstration to support the use of PM₁₀ as a surrogate for PM_{2.5}. We have worked with other permitting authorities and permit applicants to establish an appropriate PM_{2.5} modeling protocol. If the applicant chooses to model for PM_{2.5} impacts directly, please contact us to develop a methodology that will ensure that an appropriate analysis is performed.

IV. Integrated Gasification Combined Cycle (IGCC) Consideration

The TCEQ indicated in its RTC on page 29 of 61 in the Executive Director's Response to Comments that neither the applicant nor TCEQ evaluated any other electrical generation methods such as IGCC or pulverized coal (PC) boilers. TCEQ indicated that inclusion of IGCC in the Best Available Control Technology (BACT) evaluation would require substantial redesign of the applicant's proposed facility. Later in the same response, TCEQ indicates that it does not require a review of IGCC as part of the BACT review for electric generating units (EGUs).

In at least one federal permitting action, IGCC was considered an available control option in the BACT analysis for a facility proposed to generate electricity from coal. See *Prairie State Generating Company* (Illinois). Further, in a recent decision, the EPA Environmental Appeals Board (EAB) remanded the permit because it did not contain an adequate justification for excluding IGCC from the BACT analysis for a coal fired power EGU. See *Desert Rock Energy Company, LLC*, PSD Appeal Nos. 08-03 et.al. Slip. Op. at 76-77 (EAB Sept. 25, 2009). This EAB decision was followed in the Title V order for the petition on the American Electric Power Service Corporation, Southwestern Public Service Company John W. Turk order responding to a Title V petition (Petition Number VI-2008-1), where the EPA Administrator found that the Arkansas Department of Environmental Quality (ADEQ) failed to provide an adequate justification to support its conclusion in the PSD BACT analysis that IGCC technology should be eliminated from consideration on the grounds that it would "redefine" the proposed source. To meet the applicable legal criteria under the PSD program, a BACT analysis for each pollutant must consider "application of production processes or available methods, systems, and techniques ... for control of such pollutant." See 40 C.F.R. §§ 51.166(b)(12) and 40 C.F.R. § 52.21(b)(12). Therefore,

when a potential pollution control strategy is not considered in a BACT analysis, the record should provide a reasoned basis to show why that option is not available in a particular instance. We recognize that TCEQ has made a good faith effort to address this issue consistent with prior EPA determinations. However, in light of the EAB's recent conclusions, we strongly recommend that TCEQ and the permit applicant specifically address any IGCC technology considerations as a part of their BACT analysis and provide a reasoned explanation consistent with the EAB's position to support any decision to eliminate such an option or to exclude it altogether from a BACT analysis for this proposed source.

V. BACT Limits Based on Clean Fuels

It is unclear if the TCEQ or the applicant considered "clean fuels" in its BACT analysis. Comment 27 in the response to comments indicates that commenters stated that the applicant and TCEQ failed to consider alternative fuels to reduce emissions such as using only Powder River Basin (PRB) coals. TCEQ stated in its response that the "applicant proposes the facility to accomplish its objective based upon its business decisions. Those decisions include the applicant's choice of fuels. The applicant designed the plant using its choice of fuels and TCEQ reviewed the application as it was submitted. TCEQ does not specify the type of fuel to use in a fossil fuel electric generation plant because the cost of fuel is a primary business decision consideration that is up to the applicant to determine."

We believe the TCEQ should analyze the possibility of cleaner fuels as an alternative primary fuel source in the RTC. At this time, TCEQ does not include a federally approved definition of BACT in its State rules. The Clean Air Act includes the term "clean fuels" in the definition of BACT after the term "fuel cleaning." 42 U.S.C. § 7479(1). Thus, when a potential pollution control strategy is not evaluated in detail in a BACT analysis, the record should provide a reasoned basis to show why that option is not "available" in a particular instance. EPA has recognized that "available" options for a particular facility do not necessarily have to include options that would fundamentally "redefine" the source proposed by the permit applicant. See, e.g., *In re: Desert Rock Energy Company, LLC, PSD Appeal No. 08-03 et al*, slip op. at 59-65 (EAB, September 24, 2009). However, EPA interprets the Act to require a reasoned justification, based on an analysis of the underlying administrative record for each permit, to support a conclusion that an option is not "available" in a given case on the grounds that it would fundamentally "redefine the source." *Desert Rock*, slip op. at 63-72, 76. Based on the record here, it does not appear that TCEQ has provided a reasoned explanation demonstrating why the option of using PRB coals is not "available" for this facility.

We believe TCEQ must clearly provide a rationale for why utilizing fuels other than Illinois coal and/or petroleum coke, or blends from each of the proposed identified fuels constitutes "redefining the source". Further, the rationale should state if there are economic, environmental, or energy impacts from the use of PRB coals (or lower sulfur petroleum coke) that weigh against its selection as BACT. We acknowledge that States with SIP-approved PSD programs have independent discretion and are not necessarily required to follow all EPA policies or interpretations. See, e.g., 57 Fed. Reg. 28093, 28095 (June 24, 1992). However, states that issue PSD permits under SIP-approved regulations are required to conduct a BACT analysis that is

reasoned and faithful to the statutory framework. See *Alaska Dept of Env'tl Conservation v. EPA*, 540 U.S. 461, 484-91 (2004).

On the question of whether an option may be excluded because it redefines the proposed source, the EAB has developed an analytical framework that EPA uses to assess this issue in its own permitting decisions. See, e.g., *Prairie State*, slip op. at 26-37 ; *Desert Rock*, slip op. at 59-65. Since the EAB has articulated a foundation for its approach that has been upheld by one U.S. Court of Appeals, we strongly recommend that SIP-approved States follow the framework articulated by the EAB. We are not concluding that the present permit limits do not represent BACT - only that the present permit record does not appear to provide a sufficient rationale to demonstrate the adequacy of the BACT determinations for this facility. In addition, we are not expressing a policy preference for utilization of a particular coal type, or coal from a particular coal basin. EPA supports the development and use of a broad range of fuels and technologies across the energy sector including those that will enable the sustainable use of coal. Our primary concern is the adequacy of TCEQ's response and rationale for excluding PRB or the possibility of utilizing lower sulfur coal or lower sulfur petroleum coke as fuel options.