

## **Synopsis of SOAH Judges' Letter Regarding Exceptions to the Proposal for Decision**

On August 11, 2010, the two Administrative Law Judges with the State Office of Administrative Hearings who presided over the contested case hearing held last February on White Stallion's application to the TCEQ for an air permit issued a letter responding to the parties' "exceptions" to the Judges' July 2, 2010, Proposal for Decision. "Exceptions" are post-PFD briefings in which the parties present any arguments on perceived errors in the PFD. They are filed with both the Judges and the 3-member TCEQ Commission. It is common for SOAH Judges to issue a letter in response to the parties' exceptions, explaining to the Commission whether any changes to the hundreds of Findings of Fact and Conclusions of Law in the proposed order accompanying the PFD should be made.

Because the Judges' had resolved most contested issues in White Stallion's favor in their PFD, the exceptions filed by protesting parties Sierra Club and Environmental Defense Fund were numerous and wide-ranging. But in their August 11, 2010, letter, the Judges explained that they were not recommending any changes to the PFD in response to any of the protesting parties' arguments.

White Stallion also filed some exceptions, explaining why none of the Judges' three stated reservations were reasons to withhold permit issuance. Those three reservations pertained to (1) White Stallion's use of TCEQ-published monitoring data in conducting the TCEQ-prescribed ozone analysis, (2) TCEQ Staff's decision to not require during technical review of the application an analysis of a pollutant (coal dust) that was fully evaluated by two toxicologists at hearing, and (3) a question in the Judges' mind about which hydrogen chloride and hydrogen fluoride permit limits mentioned in the evidentiary record were the correct ones. In their August 11, 2010, letter, the Judges agreed that all of White Stallion's recommended changes to their proposed order concerning the ozone issue be made, and that White Stallion had satisfactorily explained that it would meet the lower of the two sets of HCl and HF permit limits discussed in the record.

Regarding the second issue, involving the adequacy of TCEQ Staff's technical review as it pertained to coal dust, the Judges agreed that many of White Stallion's suggested changes to their proposed order be made to more properly reflect the record evidence, but they did not agree with all of White Stallion's proposed changes on this issue. White Stallion remains confident that the Commissioners will properly appreciate the Judges' lone remaining reservation as a slight misunderstanding of TCEQ's requirements for permit issuance when they consider SOAH's PFD, as well as the exceptions filed by the parties and the Judges' letter response, at a regularly scheduled public meeting on a date to be determined and deliberate and vote on whether the air permit should be issued.