



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

**NOV 13 2009**

Mr. Fred Anthamatten  
Chief, Regulatory Branch, CESWG-PE-R  
U.S. Army Corps of Engineers  
P.O. Box 1229  
Galveston, Texas 77553-1229

Dear Mr. Anthamatten:

This letter is in reference to the Public Notice (PN) SWG-2009-00945, dated October 13, 2009. The following comments were prepared under the authority of, and in accordance with, the provisions of the Federal Guidelines (Guidelines) promulgated at 40 CFR Part 230 under Section 404(b)(1) of the Clean Water Act (CWA).

The applicant, White Stallion Energy Center, LLC, is proposing to develop a clean coal power plant that is located adjacent to the Colorado River (mile marker 14) off County Road 2668, near Bay City, in Madagorda County, Texas. The purpose for the project is to satisfy a "growing demand for low cost power."

The proposed development is expected to discharge approximately 19,000 cubic yards of clean upland fill material into 8.133 acres of jurisdictional waters of the United States. The 8.133 acres of direct impact include: 2.705 acres of emergent wetlands, 4.95 acres of open water, 0.017 acres of ephemeral stream, and 0.461 acres of perennial stream. Secondary impacts of the proposed project need to be addressed, such as impacts to the nearby forested wetland.

EPA attended a site visit for SWG-2009-00945 on October 26, 2009 with Texas Parks and Wildlife, the U.S. Army Corps of Engineers, Texas General Land Office, U.S. Fish and wildlife Service, Texas Commission on Environmental Quality, NOAA, and the consultant.

The Public Notice states that mitigation credits will be provided by National Fish and Wildlife Foundation for ecologically sensitive areas. It is not stated if the proposed mitigation satisfies the need for in-kind compensatory mitigation. The EPA prefers and recommends that compensatory mitigation be performed as restoration, rather than preservation.

The applicant bears the burden for demonstrating that the proposed project is the least environmentally damaging practicable alternative that achieves the project purpose. The determination of the least environmentally damaging practicable alternative is achieved by

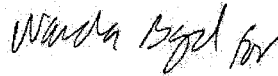
performing an alternatives analysis that evaluates the direct, secondary, and cumulative impacts to waters of the U.S. resulting from each alternative considered. A financial gain or loss is not a component in the alternatives analysis and is not a justifiable reason for the decision not to pursue an alternative.

We have the following specific recommendations for project modification and request that no permit be issued until the following issues are addressed and provided for review to interested federal and state agencies.

1. The applicant provides a detailed alternative analysis, focused on the least environmentally damaging practicable alternative.
2. The applicant provide information detailing how the development followed the mitigation outline (i.e. avoided, minimized, and provided compensatory mitigation) for all impacts to wetlands and special aquatic sites.
3. The applicant provides a detailed in-kind compensatory wetland mitigation plan, including in-kind compensatory mitigation for jurisdictional wetlands that are directly and indirectly impacted through development.
4. The applicant leaves as many existing, native trees, both mature and juvenile, within the planned development.
5. The proposed project be relocated due to the distance, approximately 80 miles, that the energy produced by the plant needs to travel to be sold to greater Houston. The relocation would also reduce the travel of the petroleum coke from sites in Houston to the proposed project site.
6. An EIS be conducted for the proposed project to better access the substantial change to the human environment, including those public interest review factors listed in the Public Notice
7. The applicant include additional measures of quantifiably testing to determine if water from the coal pile outfall and the water treatment building will negatively impact the physical, chemical, and biological properties of the Colorado River and the unnamed perennial stream.
8. The applicant incorporates the existing rail line into the project proposal to reduce or eliminate the need for barge traffic on the Colorado River.
9. Proposed plans that minimize stream bank erosion if barge traffic cannot be eliminated.

Therefore, for the reasons stated above, we recommend that a permit for the proposed project not be issued at this time. If you have any questions regarding our position in this case, please contact Jenelle Hill of my staff at 214-665-9737.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Sharon Fancy Parrish".

Sharon Fancy Parrish  
Chief  
Wetlands Section