

BEFORE THE MISSISSIPPI ENVIRONMENTAL QUALITY PERMIT BOARD

IN RE: FORMAL HEARING REGARDING THE ISSUANCE OF POLLUTION CONTROL PERMITS TO THE LONE OAK ENERGY ENTER, LLC.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On April 9, 2002, the Mississippi Environmental Quality Permit Board (Permit Board) conducted an evidentiary hearing pursuant to Miss. Code Ann. §49-17-29 (Rev. 1999) concerning the Permit Board's issuance of pollution control permits (Air Emissions PSD Construction Permit No. 1680-00055, Air Emissions State Operating Permit No. 1680-00055, State Operating No Discharge Wastewater Permit No. MSU000144, General Stormwater Construction Coverage No. MSR101748, and General Stormwater Baseline Coverage No. MSR001519) to the Lone Oak Energy Center (Lone Oak) on November 13, 2001. The hearing was held pursuant to Mr. Glenn Wheeler's December 7, 2001 request to hold a "formal hearing to further investigate...diminished property values, ground water contamination, air pollution, and other concerns" caused by the issuance of the permits to Lone Oak. The Permit Board previously had received prefiled written direct testimony from MDEQ staff and prefiled written direct and rebuttal testimony from Lone Oak. The appellant, Mr. Wheeler, did not prefile any testimony. At the hearing, the Permit Board allowed each party to make an opening statement, allowed each party the opportunity to cross-examine witnesses presented by the other parties, and allowed each party to make closing statements.

At the hearing, the Permit Board also considered and voted on the surface water withdrawal permit issued to the Columbus Light and Water Department on November 13, 2001. However, since two different permittees and two different types of permits (pollution control and water resources) were involved, the Permit Board ruled on each permit separately and is issuing two distinct findings

and fact and conclusions of law. This record of decision concerns only the decision regarding Lone Oak.

At the conclusion of the evidentiary hearing, and having considered the written submissions of each party, the live testimony and presentation of statements made during the evidentiary hearing, and the MDEQ public record file in this matter, the Permit Board voted unanimously to affirm its issuance of the pollution control permits.

In making this decision, the Permit Board adopted staff=s recommendation to affirm the issuance of the permits. Specifically, the Permit Board found that the proposed facility complied with all applicable laws and regulations including:

- § Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants, APC-S-1;
- § Air Emission Regulations for the Construction and/or Operation of Air Emission Equipment, APC-S-2;
- § Mississippi Regulations for the Prevention of Significant Deterioration of Air Quality, APC-S-5;
- § Mississippi Wastewater Regulations for the National Pollutant Discharge Elimination System Permits, Underground Injection Control (UIC) Permits, State Permits, Water Quality Based Effluent Limitations and Water Quality Certification, WPC-1; and
- § Water Quality Criteria for Intrastate, Interstate, and Coastal Waters.

The Permit Board based its decision on the facts and conclusions presented in the following documents, which are in the public record file and are incorporated herein by reference: Affidavits of Jerry Cain and Maya Rao, Initial Statement of Lone Oak Energy Center filed by Steven Remillard, Affidavit of Joe Brooks adopted by Nick Hairston, Affidavit of Charleigh Ford adopted

by John Hardy, Affidavit of Jeffrey Rupp, and Rebuttal Statement of Counsel on behalf of Lone Oak Energy Center.

The Permit Board also has considered the points raised by Glenn Wheeler in opposition to these permits. Wheeler raised three primary objections: That the proposed plant would store hazardous waste on-site, that the environmental self-audit privilege would prevent disclosure of information, and that local economic considerations showed that the proposed plant was not needed. Mr. Wheeler did not present any evidence or prove to the Permit Board that hazardous waste would be generated or stored by the Lone Oak facility. Mr. Steven Remillard stated during cross-examination by Mr. Wheeler that no hazardous waste would be stored at the facility. Instead, the waste produced at similar facilities, and expected to be produced here, is classified as nonhazardous solid waste. During redirect examination, Mr. Remillard stated that the waste generated by the facility could be properly and legally disposed of in a RCRA Subtitle D landfill, which takes only nonhazardous solid waste. Therefore, the Permit Board found no reason to believe that the information submitted in Lone Oak's permit applications was not correct as it pertained to hazardous waste or that hazardous waste would be generated or stored at the facility. Lone Oak bears the continuing burden of characterizing its waste as hazardous or nonhazardous pursuant to 40 C.F.R. § 261.3.

The second issue similarly makes no difference to the validity of the permits issued. The environmental self-evaluation privilege found at Miss. Code Ann. § 49-2-71 does not render the permits issued by the Board to be in noncompliance with the applicable environmental laws and regulations. In fact, any information required to be submitted by Lone Oak on the permit

applications or required by any law or regulations is exempt from the privilege. Miss. Code Ann. § 49-2-71(2) (Rev. 1999).

Although the Permit Board received arguments regarding the economic state of the local community where the proposed project is planned, economic considerations are not within the Permit Board's jurisdiction regarding the issuance of these permits.

The Permit Board concludes, on the basis of these considerations and MDEQ staff recommendation that the permits at issue here meet all applicable statutory and regulatory requirements. The issuance of the permits is, therefore, affirmed.

The appeal cost bond in this matter is set at \$100.00, pursuant to Miss. Code Ann. § 49-17-29(5)(b) (Rev. 1999).

Rick Herrington, Chairman
Mississippi Environmental Quality
Permit Board

Date