

Kathleen Hartnett White, *Chairman*  
Larry R. Soward, *Commissioner*  
H. S. Buddy Garcia, *Commissioner*  
Glenn Shankle, *Executive Director*



TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

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## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

CHIEF CLERKS OFFICE

August 22, 2007

- To: Persons on the Attached Mailing List (by mail and facsimile as indicated)
- Re: Appeal of the Executive Director's Negative Use Determination regarding BJ Services Company USA, TCEQ Use Determination No. 06-10292; TCEQ Docket No. 2007-0490-MIS-U.

The above-referenced appeal (Appeal) was filed by W. Ted Clark, UHY Advisors SALT, LLC on the behalf of BJ Services Company, USA (Appellant or BJ Services). Appellant requests Commission consideration of the negative use determination portion of the Executive Director's March 2007 decision in Use Determination No. 06-10292. My office previously provided an opportunity for the Executive Director, the Office of Public Interest Counsel (OPIC) and the Chief Appraiser for the Harris County Appraisal District to file response briefs and for the Appellant, BJ Services, to file a reply brief. The Executive Director and the Office of Public Interest Counsel filed response briefs explaining why the appeal should be denied. No reply brief from the Appellant was received with regard to the recommendations for denial filed by the Executive Director and OPIC.

My office understands that discussions subsequent to the filing of the responses about this matter took place between the Appellant and the staff of the Executive Director and that those discussions are now complete. After review of the responses, I have determined to give the Appellant, BJ Services, an additional or second opportunity to explain why it is legally entitled to a positive use determination. Accordingly, the Appellant, BJ Services, may file a reply brief in the Commission's Office of Chief Clerk (OCC) on or before **5:00 P.M. on Monday, September 17, 2007.**

To be considered timely, an original and eleven copies of the reply brief must be received in the OCC on or before the September 17, 2007, 5:00 P.M. deadline. All briefs filed with the OCC must be addressed to the attention of the Agenda Docket Clerk and be marked with the TCEQ Docket number provided above. The reply brief should also be mailed to all other persons on the attached mailing list on the same day mailed or filed in the Office of Chief Clerk.

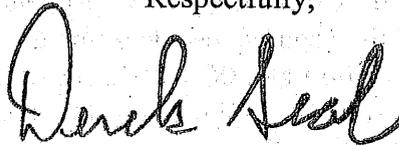
As I mentioned before, the Commission's determination is primarily a legal determination based on the applicable statutes, rules, and guidance documents. The reply brief should address with specificity the applicable statute(s), rule(s), and parts of guidance document(s) that support the position of the filer. However, the Appellant, BJ Services, may elect instead to withdraw the appeal. A withdrawal of the appeal can be accomplished by either emailing Celeste Baker, Assistant General Counsel, at [cbaker@tceq.state.tx.us](mailto:cbaker@tceq.state.tx.us) a statement of withdrawal from the company or its representative, Mr. W. Ted Clark, or by mailing her a withdrawal letter to Mail Code 101 at the address for the Commission on this letter. If the appeal is not withdrawn on or before September 17, 2007, the

mailing list will be notified by subsequent letter of the Commission public meeting during which the Appellant, BJ Services, may present its oral legal argument to the Commissioners for their consideration. At that public meeting, the Executive Director, the OPIC, and the Chief Appraiser of the Harris County Appraisal District may also present their legal positions with regard to the appeal.

Chapter 17 of the Commission's rules (30 Texas Administrative Code Chapter 17) contains the requirements applicable to Use Determinations, including the rules that address the review standards and appeals process. The website of the Texas Secretary of State contains a complete copy of the Texas Administrative Code, including Chapter 17 of Title 30, at [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.viewtac](http://info.sos.state.tx.us/pls/pub/readtac$ext.viewtac).

If you have any questions about the additional briefing opportunity, please contact Celeste A. Baker, Assistant General Counsel, at 512/239-5527.

Respectfully,



Derek Seal  
General Counsel

Mailing List

H:/counsel/baker/letters/07/Prop2brief/BJServicesCompany2ReplyBriefoppty.ltr

Mailing List  
BJ Services Company USA  
TCEQ Docket No. 2007-0490-MIS-U

Jim Robinson, Chief Appraiser  
Harris County Appraisal District  
P.O. Box 920975  
Houston, Texas 77292  
713/957-5299 FAX 713/957-5210

W. Ted Clark  
UHY Advisors SALT, LLC  
12 Greenway Plaza, 8<sup>th</sup> Floor  
Houston, Texas 77046-1291  
713/960-1706 FAX 713/407-3760

BJ Services Company, USA  
11211 FM 2920 Road  
Tomball, Texas 77375  
713/859-5801 FAX 713/859-5823

BJ Services Company  
4601 Westway Park Blvd.  
P. O. Box 4442  
Houston, Texas 77210-4442

Ron Hatlett  
TCEQ Small Business &  
Environmental Assistance Division MC 110  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-3100 FAX 512/239-3165

Les Trobman  
Tim Eubank  
TCEQ Environmental Law Division MC 173  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-0600 FAX 512/239-0606

Garrett Arthur  
TCEQ Office of Public Interest Counsel MC 103  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-6363 FAX 512/239-6377

Docket Clerk  
TCEQ Office of Chief Clerk MC 105  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-3300 FAX 512/239-3311

Bridget Bohac  
TCEQ Office of Public Assistance MC 108  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-4000 FAX 512/239-4007

Kyle Lucas  
TCEQ Alternative Dispute  
Resolution Program MC 222  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-0687 FAX 512/239-4015

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