TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 14, 2007

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

Re: **BJ SERVICES COMPANY USA**
TCEQ DOCKET NO. 2007-0490-MIS-U

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Response to Appeal of Use Determination in the above-entitled matter.

Sincerely,

Garrett Arthur, Attorney
Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2007-0490-MIS-U

APPEAL OF EXECUTIVE DIRECTOR'S USE DETERMINATION REGARDING BJ SERVICES COMPANY USA	§ § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO APPEAL OF USE DETERMINATION

To the members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or the "Commission") files this response to the appeal of the Executive Director's (ED) use determination.

I. Introduction

On March 6, 2007, the ED issued a use determination regarding certain property at the BJ Services Company USA ("BJ Services") facility in Tomball, which is located in the Harris County Appraisal District. For the majority of the submitted property, the ED made a 100% positive use determination. However, for the fire prevention system, the self contained air recirculation system, and the safety showers, the ED made a negative use determination. On March 28, 2007, an appeal of the ED's use determination was filed by BJ Services. The appeal is limited to the ED's negative use determination for the self contained air recirculation system. BJ Services states that this item was improperly classified as safety property rather than pollution control property, and requests the reclassification of the system to reflect its use as pollution control property. Based on a review of the appeal, the Chief Clerk's file on this matter, and the application, OPIC recommends that the Commission deny the appeal and affirm the ED's use determination.

II. Analysis

In Title 30 of the Texas Administrative Code (TAC), Chapter 17 sets out TCEQ's rules for tax relief for property used for environmental protection. Section 17.4(a) sets out the requirements for obtaining a positive use determination. Subsection (b) provides the ED the authority to determine the portion of the pollution control property eligible for a positive use determination. Subsection (c) directs the ED to create and "maintain a predetermined equipment list of property that is predetermined to qualify, either wholly or partially, as pollution control property." Pursuant to § 17.15, the Commission has established review standards to determine whether any particular equipment item qualifies as pollution control property. The "Prop 2 Decision Flow Chart" attached to § 17.15 establishes the standards when the ED acts on a use determination application. The flow chart includes the Predetermined Equipment List (PEL), which describes items that automatically qualify for a positive Tier I determination.

According to the flow chart, the ED must prepare a list of equipment/processes considered to be pollution control property. Then, the ED must run each piece of equipment or process through the flow chart separately. Thereafter, the ED must then determine if the installation of the equipment allows the company to meet or exceed an adopted environmental rule, law or regulation. If the ED determines the company will meet or exceed a rule, law or regulation as a result of installation of this equipment, then the ED must determine if there is an environmental benefit at the site.

By stating that the self contained air recirculation system is safety property rather than pollution control property, the ED has presumably determined that the system in question does not allow BJ Services to meet or exceed an environmental regulation, and the system does not

provide an environmental benefit at this site. BJ Services disagrees with the ED's classification of the self contained air recirculation system as safety property. However, the appeal does not contain any discussion of why this system should qualify as pollution control property.

III. Conclusion

Without further information or explanation regarding BJ Services' position in this matter, OPIC cannot support the appeal. OPIC respectfully recommends denying the appeal of BJ Services and upholding the Executive Director's negative determination for the self contained air recirculation system.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2007, the original and eleven true and correct copies of the foregoing document were filed with the TCEQ Chief Clerk, and copies were served to all parties listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, or by deposit in the U.S. Mail.

Garrett Arthur

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