

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*



Blas J. Coy, Jr., *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

July 28, 2008

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

2008 JUL 28 PM 1:47  
CHIEF CLERKS OFFICE  
TEXAS COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: **MONT BELVIEU NORTH STORAGE  
TCEQ DOCKET NO. 2008-0940-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,

A handwritten signature in cursive script, appearing to read "Garrett Arthur".

Garrett Arthur, Attorney  
Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 • P.O. BOX 13087 • AUSTIN, TEXAS 78711-3087 • 512-239-6363

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • Internet address: [www.tceq.state.tx.us](http://www.tceq.state.tx.us)

Printed on recycled paper using soy-based ink

2008 JUL 28 PM 1:47

TCEQ DOCKET NO. 2008-0940-MIS-U

APPEAL OF EXECUTIVE DIRECTOR'S  
USE DETERMINATION REGARDING  
MONT BELVIEU NORTH STORAGE  
USE DETERMINATION NO. 07-11881

§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
OPERATIONS OFFICE

**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 the 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 regarding Mont Belvieu North Storage ("Mont Belvieu").

**I. Introduction**

In February 2008, Mont Belvieu submitted a Tier I use determination application to the TCEQ. Mont Belvieu sought a use determination for a brine storage pond facility in Chambers County. Specifically, the application is for one 35 ft. by 70 ft. concrete pump pit, one 600 hp transfer pump, and 3,500 ft. of 30 in. HDPE piping. On May 20, 2008, the ED issued the following use determination: "A negative determination for the equipment and installation costs of the Brine Storage Pond Project. This equipment is considered to be production equipment and not pollution control property." On June 6, 2008, the TCEQ received Mont Belvieu's appeal of the ED's negative determination.

For the reasons stated herein, OPIC recommends that the appeal by Mont Belvieu be denied.

## **II. Applicable Law**

The applicable TCEQ rules concerning tax relief for property used for environmental protection are found in Title 30 of the Texas Administrative Code (TAC), Chapter 17. Parts of Chapter 17 were amended to be effective February 7, 2008. Because Mont Belvieu's application was deemed administratively complete on February 26, 2008, after the February 7 effective date of the Chapter 17 amendments, the current Chapter 17 rules apply to this application.

To obtain a positive use determination under 30 TAC § 17.4, the pollution control property must be used, constructed, acquired, or installed wholly or partly to meet or exceed laws, rules, or regulations adopted by any environmental protection agency of the United States, Texas, or a political subdivision of Texas, for the prevention, monitoring, control, or reduction of air, water, or land pollution. In § 17.14, the Equipment and Categories List (ECL) catalogs property that the ED has determined is used either wholly or partly for pollution control purposes. Section 17.15(a) provides a Decision Flow Chart which is used for each item of property submitted in a use determination application to determine whether the particular item will qualify as pollution control property. Under § 17.25, an applicant has 20 days to appeal a use determination issued by the ED.

## **III. Analysis**

As stated previously, the ED's use determination was issued May 20<sup>th</sup>, and Mont Belvieu's appeal was received June 6<sup>th</sup>. Using these dates, the appeal is timely under § 17.25.

Mont Belvieu's appeal states that this project deserves a positive use determination because it employs many features that prevent the brine from contaminating surrounding lands, and in the past, TCEQ has granted positive use determinations for facilities like this project.

The application states that the subject property falls under category S-20 on the ECL. Category S-20 is for surface impoundments and ancillary equipment, including brine disposal ponds. The ED's technical review document states that this ECL category does not apply because the facility is not a disposal pond. The ED further states that all of the requested equipment is in place to move the brine and is not considered to be pollution control property.

Mont Belvieu's facility stores brine which is used to displace hydrocarbons from an underground hydrocarbon storage facility. The equipment in question is a concrete pump pit, a transfer pump, and piping. Using the § 17.15 decision flow chart, each piece of equipment must provide an environmental benefit at the site to be eligible for a positive use determination. The brine at this facility is used to move hydrocarbons into and out of salt cavern, and the subject equipment serves this purpose. OPIC cannot discern any environmental benefit that the concrete pump pit, the transfer pump, or the piping would provide. Instead, OPIC agrees with the ED's characterization of this equipment as production equipment. Without providing an environmental benefit at the site, the equipment in question cannot qualify for a positive determination under § 17.15.

Mont Belvieu's appeal states that the TCEQ has previously made positive determinations for brine storage pond projects. While positive determinations may be appropriate for certain pollution-controlling components of a brine storage facility, such as a pond liner and a leak detection system, Mont Belvieu's application does not include a liner or a leak detection system. OPIC finds that the specific equipment requested by Mont Belvieu does not qualify as pollution control property and is therefore ineligible for a positive determination.

**IV. Conclusion**

Based on our review of the appeal, the Chief Clerk's files, and the application, OPIC concurs with the ED's negative use determination for this application. OPIC finds that the ED correctly applied the relevant law, and the law dictates the negative use determination made by the ED. Therefore, OPIC respectfully recommends the Commission deny Mont Belvieu's appeal.

Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By   
Garrett Arthur

Assistant Public Interest Counsel  
State Bar No. 24006771  
P.O. Box 13087, MC 103  
Austin, Texas 78711  
phone: (512) 239-5757  
fax: (512) 239-6377

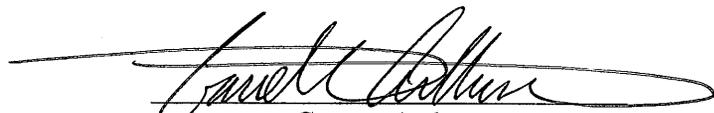
CHIEF CLERKS OFFICE

2008 JUL 28 PM 1:47

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**CERTIFICATE OF SERVICE**

I hereby certify that on July 28, 2008, the original and eleven true and correct copies of this 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

**MAILING LIST**  
**MONT BELVIEU NORTH STORAGE**  
**TCEQ DOCKET NO. 2008-0940-MIS-U**

Chris G. Cisneros  
Mont Belvieu Caverns LLC  
Ad Valorem Tax  
P.O. Box 4018  
Houston, Texas 77210-4018  
Tel: 713/803-2895  
Fax: 713/803-1412

Michael L. Fregia, Chief Appraiser  
Chambers County Appraisal District  
PO Box 1520  
Anahuac, Texas 77514  
Tel: 409/267-3795  
Fax: 409/267-6192

Robert Martinez  
Texas Commission on Environmental Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512/239-0600  
Fax: 512/239-0606

Bridget Bohac, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance, MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-4000  
Fax: (512) 239-4007

Kyle Lucas  
Texas Commission on Environmental Quality  
Alternative Dispute Resolution, MC-222  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-4010  
Fax: (512) 239-4015

LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512/239-3300  
Fax: 512/239-3311