

TCEQ Docket No. 2008-0940-MIS-U

In The Texas Commission on Environmental Quality

Appeal of the Executive Director's Negative Use Determination
Issued to Mont Belvieu Caverns, LLC
for the Mont Belvieu North Storage Facility
Application No. 07-11881

**REPLY BRIEF OF APPELLANT,
MONT BELVIEU CAVERNS, LLC**

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TESTIMONY REQUESTED
(30 TEX. ADMIN. CODE § 17.25(d)(1))

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In 2007, Mont Belvieu Caverns, LLC (Appellant) built a double-lined brine disposal pond in compliance with environmental regulations of the Railroad Commission. Appellant applied to the Executive Director for a determination that the pond is pollution control property, which would entitle the Appellant to a property tax exemption.

Brine disposal ponds are listed on the “preapproved” Equipment and Categories List because the Executive Director has previously determined that brine disposal ponds, and ancillary equipment, are 100% pollution control property. The Executive Director has repeatedly extended 100% pollution control determinations to brine ponds used by Appellant and others in the processing, transportation, and storage of liquefied petroleum gases. These brine ponds meet or exceed pollution control and resource conservation requirements of the Texas Natural Resources Code and the Railroad Commission.

In an abrupt about-face, the Executive Director has denied a positive use determination for the same type of brine pond he repeatedly approved in past years. According to the Executive Director, the brine pond at Mont Belvieu North Storage is production equipment and not pollution control property. Because this conclusion is legally and factually incorrect, the Commission should remand this matter to the Executive Director for a positive use determination.

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INTRODUCTION

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ABOUT THE APPENDIX

Appellant cites a separately filed appendix, which contains sequentially numbered documents that support the factual statements in this brief.

FACTUAL BACKGROUND

I. General Description Of The Subject Property

Appellant applied for a use determination on a brine pond and ancillary equipment at the Mont Belvieu North Storage Facility. This facility stores liquefied petroleum gases in below-ground salt dome caverns developed in the Barbers Hill Field, near Mont Belvieu, Texas. The brine pond was designed and built as part of an integrated system at the North Storage Facility to prevent land and water pollution, to decrease the use of fresh groundwater for making brine, and to decrease the quantity of brine disposed of by underground injection. The brine pond system was permitted by the Texas Railroad Commission because Appellant's activities at the North Storage Facility are considered oil and gas production activities. *See* TEX. NAT. RES. CODE ANN. § 91.101(a)(2) (defining "production of oil and gas" to include "activities associated with any hydrocarbon underground storage facility").

II. North Storage Waste Minimization Project

Liquefied petroleum gases are stored at the North Storage Facility in underground salt dome caverns at an adequate pressure to maintain the material in liquid form. The liquefied petroleum gases are removed from the caverns by displacement with brine. Conversely, when liquefied petroleum gases are pumped into the caverns, the brine solution is displaced from the caverns. The displaced brine must be injected into the ground through a disposal well in the absence of any brine storage ponds, which allow the brine to be reused. App. at 1 (simplified process flow diagram).

Between 1998 and 2002, Appellant disposed of several million barrels of brine per year via injection wells, and was using comparable amounts of fresh water to generate additional brine. To avoid this disposal and the use of precious fresh water and salt dome resources, Appellant developed a waste minimization project based on the construction of brine storage ponds, including the brine pond at issue in this appeal.

Critically, these brine storage ponds must be (and were) built in compliance with the water protection requirements of the Railroad Commission's Statewide Rule 8. 16 TEX. ADMIN. CODE § 3.8. Moreover, the ponds satisfy the Railroad Commission's Statewide Rule 9, which governs brine injection disposal and adopts by reference the directive from the Texas Natural Resources Code to minimize oil and gas waste. *See* 16 TEX. ADMIN. CODE § 3.9; TEX. NAT. RES. CODE ANN. § 91.110.

With the approval of the Environmental Services Section of the Railroad Commission, Appellant developed a brine management system at the North Storage Facility consisting of two preexisting on-site brine ponds, the new brine pond that is the subject of this appeal, one off-site brine production well, two off-site brine disposal wells, and the associated pumps and piping to move the brine. App. at 2-3 (diagram).

The effectiveness of the system is demonstrable. Since the brine pond that is the subject of this appeal was completed in 2007, the project has reduced disposal of brine as waste by **97%**.

III. Specific Components Of The Subject Property

The brine management system at the North Storage Facility is essentially the same as the brine management system at the Mont Belvieu East Storage Facility. *Compare* App. at 4-7 with *id.* at 10-15. In 2007, the Executive Director granted a positive use determination of 100% on two brine ponds at the East Storage Facility. App. at 16. In other words, the Executive Director has previously determined that virtually identical brine ponds are pollution control property and *not* production property.

Like the prior project at East Storage that was approved 100%, the subject project includes the following integral parts:

- ▶ an HDPE double-lined pond (which prevents brine from leaching into the groundwater by means of an impermeable barrier);
- ▶ a leak detection and collection system (which protects groundwater by identifying brine leakage and then returning leakage to the primary pit); and
- ▶ a secondary confinement concrete sump pit, with transfer pumps and related piping and instrumentation (which prevents brine from leaching into the groundwater).

App. at 5. Extensive excavation was also required to build the brine storage ponds at the North and East Storage Facilities.

PROCEDURAL BACKGROUND

Given the similarity between the subject project and its prior project, Appellant sought a positive use determination from the Executive Director that its new brine pond was pollution control property. App. at 4-7. The subject project was also similar to

projects approved in the past for other operators of salt dome liquefied petroleum gas storage facilities. App. at 16, 53-54, 72, 75, 77.

Appellant specifically tendered a Tier I application, seeking a 100% use determination because its brine pond project satisfied an item on the preapproved list, that is, ECL #S-20. App. at 6. This category establishes a 100% use determination for “Surface Impoundments and Ancillary Equipment (Including Brine Disposal Ponds),” further described as “[e]xcavation, ponds, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, pumps, etc.” App. at 41.

Surprisingly, despite the explicit listing of brine ponds on the pre-determined list or ECL, the Executive Director wholly denied the use application, prompting this timely appeal. App. at 8-9. The Executive Director and Office of Public Interest Counsel filed briefs in response to this appeal. The Chief Appraiser for the Chambers County Appraisal District did not respond.

ARGUMENT

I. The Executive Director Must Determine To What Extent Property Is Used As Pollution Control Property.

“A person is entitled to an exemption from taxation of all or part of real and personal property that the person owns and that is used wholly or partly as a facility, device or method for the control of air, water, or land pollution.” TEX. TAX CODE ANN. § 11.31(a); *see also* 17 TEX. ADMIN. CODE § 17.4(a). This exemption covers “pollution control property” described as:

... any structure, building, installation, excavation, machinery, equipment, or device, and any attachment or addition to or reconstruction, replacement, or improvement of that property, that is used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution. ...

TEX. TAX CODE ANN. § 11.31(b); *see also* TEX. CONST. art. VIII, § 1-1.

The property tax exemption is not granted by TCEQ's Executive Director, but he is required to determine whether property is used wholly or partially for preventing, monitoring, controlling, or reducing pollution. TEX. TAX CODE ANN. § 11.31(d). In this case, the Executive Director denied Appellant's application outright, concluding (erroneously) that the brine pond was not pollution control property on grounds that it was production equipment. App. at 8.

II. The Brine Pond Is Pollution Control Property Because It Meets Or Exceeds Pollution Control Regulations Of An Environmental Agency.

A. The Railroad Commission is the environmental agency solely responsible for regulating pollution in the oil and gas industry.

The Executive Directly concedes that Appellant's brine pond was constructed to meet the requirements of Railroad Commission Statewide Rule 8 (16 TEX. ADMIN. CODE § 3.8), but the Executive Director attempts to discount this controlling regulation by contending it was *not* promulgated "primarily" for preventing or controlling pollution. Brief of Executive Director at 4. This contention ignores the purpose of Rule 8 (which is titled "Water Protection"), the history of Rule 8, the legislative mandate placed on the

Railroad Commission, and the plain language of the Tax Code, which governs the Executive Director's use determinations.

The Texas legislature has charged the Railroad Commission with the sole responsibility to prevent pollution of surface and subsurface water from activities associated with the exploration, development, and production of oil and gas. TEX. NAT. RES. CODE ANN. § 91.101; TEX. WATER CODE ANN. § 26.131(a). This charge is consistent with state policy encouraging water conservation and voluntary land stewardship. TEX. WATER CODE ANN. §§ 1.103-1.104.

The legislature has also required the Railroad Commission to adopt rules and implement programs that encourage operators to minimize oil and gas waste. TEX. NAT. RES. CODE ANN. § 91.110; *id.* § 91.455. Accordingly, the legislature has authorized the Railroad Commission to adopt and enforce rules (and to issue permits) relating to the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste. *Id.* §§ 85.201-85.202; *id.* § 91.101. Oil and gas waste includes, among other things, salt water or brine at an underground hydrocarbon storage facility. *Id.* § 91.1011.

In 1983, the legislature required the Railroad Commission to adopt regulations that require "liner specifications and installation procedures that are adequate to insulate a saltwater disposal pit." Act of May 25, 1983, 68th Leg., R.S., ch. 975, § 1, 1983 Tex. Gen. Laws 5305, 5307 (currently TEX. NAT. RES. CODE § 91.455(b)(1)). The following year, to comply with its legislative mandate to prevent and minimize pollution, particularly regarding saltwater disposal, the Railroad Commission adopted amendments

to its water protection rule, Rule 8. *See* 16 TEX. ADMIN. CODE § 3.8; 9 Tex. Reg. 1549, 1549 (March 16, 1984).

In adopting the 1984 amendments, the Railroad Commission noted the amendments were “necessary to protect surface and subsurface water in the state from pollution.” 9 Tex. Reg. at 1549; *see also id.* at 1550 (“The [Railroad Commission] has the duty to prevent pollution, and therefore must regulate activities which might result in pollution.”). As a result of these amendments, Rule 8 states “no person conducting activities subject to regulation by the commission may cause or allow pollution of surface or subsurface waters in the state.” 16 TEX. ADMIN. CODE § 3.8(b). More specifically, Rule 8 requires permitting of “impervious collecting pits” for brine ponds. *Id.* The Railroad Commission regulates and permits these pits because they “might result in pollution.” 9 Tex. Reg. at 1550.

The permit for the brine pond in this case illustrates the environmental nature of the Railroad Commissions’ regulatory scheme. First, the permit was approved and signed by a manager in the environmental section. *See* App. at 30-31 (permit signed March 21, 2006, by Jill Hybner, Manager, Surface Waste Management Section, Environmental Services). Second, during the permit review process, the Railroad Commission inquired about water wells located near the subject pit, potential runoff, and fresh water. *See* App. at 24-25. This inquiry illustrates the water protection nature of the permitting process.

Rule 8 reflects the Railroad Commission’s commitment to implementing its statutory mandate to protect fresh water resources and to reduce the threat of pollution

from oil field brines. Indeed, the TCEQ has signed a Memorandum of Agreement with the Railroad Commission recognizing the Railroad Commission's jurisdiction over environmental aspects of the exploration, development, and production of oil and gas resources. 16 TEX. ADMIN. CODE § 3.30; *see also id.* § 3.8(i).

According to this Memorandum, TCEQ acknowledges the Railroad Commission's jurisdiction over the disposal of waste, including saltwater that results from the operation of underground hydrocarbon storage facilities. *Id.* § 3.30(e)(4). Likewise, the TCEQ acknowledges the Railroad Commission's jurisdiction over disposal wells and any discharges of oil and gas waste into or adjacent to bodies of water. *Id.* § 3.30(d)(1-2).

By statutory scheme — a scheme recognized by TCEQ — there can be *no* doubt that the Railroad Commission is an “environmental protection agency” for purposes of Section 11.31 of the Tax Code, and the Railroad Commission's rules and regulations are a legitimate basis for the tax exemption provided by Section 11.31. If property is used “wholly or partly” to meet Rule 8, the Executive Director has no discretion but to find that the property is pollution control property. *See* TEX. TAX CODE ANN. § 11.31(b). In this regard, and as discussed more fully below, the Executive Director has determined in the past that a number of brine projects and their component parts are entitled to be characterized 100% as pollution control property.

B. Appellant's brine pond satisfies Railroad Commission Rule 8.

Appellant requested a permit for its proposed brine pond, which, as previously mentioned, was specifically designed to avoid land and water pollution. *See* App. at 21

(permit application indicating need to reduce deep well disposal). The Railroad Commission approved the project according to Rule 8. *See* App. at 30 (“Authority is granted to maintain and use the pit in accordance with Statewide Rule 8 and subject to the following conditions.”).

Condition No. 5 explicitly required that “the pit be lined with a high density polyethylene primary liner with a thickness of at least 60 mils and a high density polyethylene secondary liner with a thickness of at least 40 mils.” App. at 30. The pit was, in fact, “lined as required” by the permit. *Id.* at 32 (inspection report). Thus, not only was the subject brine pond installed to prevent pollution and conserve resources, it includes an HDPE liner that meets or exceeds the Railroad Commission rule on water protection, which requires the use of liners on such pits. 16 TEX. ADMIN. CODE § 3.8(d)(6)(A).

Similarly, Condition No. 7 requires installation of a leak detection and collection system, which has been installed as required. *See* App. at 31 (condition), 32 (inspection report). This installation is beyond the baseline requirements set forth in Rule 8, which would only require a leak detection system without requiring an attendant collection system. *See* 16 TEX. ADMIN. CODE § 3.8(d)(6)(A). Again, the subject project meets or exceeds a specific regulatory requirement for controlling pollution, in addition to the purpose of the overall project. *Id.* § 3.8(d)(6)(A).

Appellant's brine project fully satisfies Rule 8. *Compare* App. at 13 (decision flow chart for comparable East Storage brine ponds). Accordingly, the Executive Director had no discretion but to issue a positive use determination.

C. Appellant's brine pond satisfies Railroad Commission Rule 9.

To help fulfill its legislative mandate to conserve natural resources, reduce waste generation and disposal, and prevent pollution, the Railroad Commission requires permits for well disposal of saltwater or other oil and gas waste. 16 TEX. ADMIN. CODE § 3.9. Appellant has applied for and received permits to dispose of oil and gas waste, including brine, via underground injection. App. at 17-20.

In fact, as noted above, Appellant has used its waste disposal wells in the past to dispose of large quantities of brine. Without the capacity offered by the brine pond to store brine produced from the salt caverns, Appellant had to immediately dispose of brine generated from the salt caverns into its brine injection wells. But, with the installation of the brine pond, Appellant has been able to dispose of substantially less brine as waste than the quantity it is allowed to dispose of according to its permit for brine injection disposal.

Appellant's permits for its injection disposal wells, like all such permits from the Railroad Commission, identify a maximum disposal volumetric rate that Appellant is not allowed to exceed. For example, the wells at the North Storage Facility each have a permitted maximum injection rate of 50,000 barrels per day. App. at 17, 19. Whenever Appellant avoids injecting brine through use of its new brine storage pond, it meets or

exceeds the requirements of Rule 9 and limitations in the permit granted to Appellant under that authority. Appellant thereby reduces pollution to both water and land, thereby qualifying the brine ponds for a positive use determination.

D. Appellant's brine pond also satisfies federal environmental regulations regarding pollution.

Appellant's brine pond is designed to meet its permitted action leak rate of 23,000 gallons per day. App. at 31. As the Railroad Commission noted, this action leak rate is well within the maximum allowable leakage rate recommended by the U.S. Environmental Protection Agency. *See* App. at 23 (citing EPA 530-R-92-004 Publication PB92-128214).

E. By focusing on waste disposal, the Executive Director improperly engrafts a new requirement on the statute.

The Executive Director argues that Appellant's brine pit is not pollution control property because it merely stores brine, rather than disposes of it. Brief of ED at 3, 4. According to the Executive Director, if brine is being stored, then it is not being disposed, and stored brine has nothing to do with pollution control. The Executive Director's argument myopically focuses on a single definition contained in Rule 8 while ignoring the purpose and intent of Rule 8 and its legislative scheme.

The Executive Director points to Rule 8's definition of "brine pit" as a "pit used for the storage of brine which is used to displace hydrocarbons." Brief of ED at 4 (citing 16 TEX. ADMIN. CODE § 3.8(a)(2)). "Brine pit" is nonetheless synonymous with "brine disposal pit" for purposes of Rule 8. Further, a "brine pit" is a type of "saltwater disposal

pit.” The basis of Rule 8, Chapter 91 of the Texas Natural Resources Code, defines “saltwater disposal pit” as “a collecting pit on the surface of the ground used to *store* or evaporate oil field brines, geothermal resource water, or other mineralized waters.” TEX. NAT. RES. CODE § 91.451 (emphasis added). There is nothing magical or controlling about the words “disposal” or “storage.” The terms are used interchangeably in the industry when referring to pits or ponds.

The controlling language is not Rule 8’s definition of any single term, but its regulatory requirement that certain saltwater and brine pits are prohibited unless permitted. 16 TEX. ADMIN. CODE § 3.8(d)(1-2). The permit will only be issued by the Railroad Commission if the pits will not result in waste of oil and gas resources “or the pollution of surface or subsurface waters.” *Id.* § 3.8(d)(6)(A). To protect the environment, the permit will state “necessary” conditions. *Id.*

In this case, the conditions required by the permit and the underlying regulation included an HDPE liner and leak detection system. These components were, in fact, installed at Appellant’s brine pond, contrary to the observation offered by the Office of Public Interest Counsel. *See* Brief of OPIC at 3. Although the Office of Public Interest Counsel and the Executive Director dispute whether there is any environmental benefit from Appellant’s project, these components obviously benefit the environment. *See* 30 TEX. ADMIN. CODE § 17.15. If not, the Railroad Commission would not have required them.

Additionally, as Rule 8 recognizes, pollution can be prevented or controlled by storing brine and reusing it, rather than injecting it back into the environment, which the oil and gas industry has done and could do. Appellant has the choice to build a brine storage pond or dispose of brine through its disposal wells, either of which is regulated by the Railroad Commission as part of its mandate to prevent pollution and conserve natural resources. The subject pond in this case has reduced the need to dispose of brine as waste by 97%, and it has conserved comparable quantities of fresh water. This waste minimization and resource conservation represents a huge benefit to the site and to the State of Texas.

Rule 8 — and Appellant’s waste minimization system, of which the subject pond is a part — were designed for the “prevention, monitoring, control, or reduction of air, water, or land pollution.” TEX. TAX CODE ANN. § 11.31(b); *see also* 30 TEX. ADMIN. CODE 17.4(a). This is exactly what the Tax Code requires, and the Executive Director erred by denying Appellant’s use determination.

III. The Brine Pond Is Listed In The ECL, As Are Each Of Its Component Parts.

The Executive Director must maintain a “predetermined equipment list” (PEL) for property that is predetermined to qualify, either wholly or partially, as pollution control property. TEX. ADMIN. CODE ANN. § 17.4(c). The PEL has been replaced by the Equipment and Categories List (ECL).

The Executive Director’s published ECL recognizes item #S-20 as preventing or controlling land and water pollution. Item #S-20 is defined as “Surface Impoundments

and Ancillary Equipment (Including Brine Disposal Ponds).” App. at 41. The property description includes “[e]xcavation, ponds, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, pumps, etc.” *Id.* Appellant’s Mont Belvieu North brine pond system fits the #S-20 designation, as did the Mont Belvieu East brine pond system that the Executive Director described as 100% pollution control property.

Significantly, while #S-20 “wraps up” all the individual components of a brine pond and its ancillary equipment and provides a 100% positive use determination for the entire package, as the following chart demonstrates, each individual component of the Appellant’s brine pond system independently satisfies an item listed in the ECL:

No	Media	Property	Description	%
S-4	Land/Water	Monitoring and Control Equipment	Alarms, indicators, controllers, etc., for high liquid level, pH, temperature, flow, etc. in waste treatment system	100%
S-6	Land/Water	Secondary Containments	External structure or liner used to contain and collect liquids released from a primary containment device and/or ancillary equipment. Main purpose is to prevent ground water or soil contamination.	100%
S-7	Land/Water	Liners	A continuous layer or layers of natural and/or man-made materials that restrict downward or lateral escape of wastes or leachate in an impoundment, landfill, etc.	100%
S-9	Land/Water	Leak Detection System	A system capable of detecting the failure of a primary or secondary containment structure or the presence of a liquid or waste in a containment structure.	100%

App. at 40. In his brief, the Executive Director admits that at least certain parts of a brine pond system are entitled to be classified as pollution control property. Brief of ED at 4 (recognizing synthetic liners, leak detection systems, and monitoring equipment as pollution control property); *id.* at 6 (same).

Given the ECL contents, the Executive Director should have given a 100% positive use determination to Appellant's brine pond.

IV. The Executive Director's Attempt To Distinguish Prior Projects Fails.

The Executive Director admits that he has previously granted positive use determinations to brine storage pits and pieces of equipment installed in the pit to control air, water, or land pollution. Brief of ED at 6. He also notes that he issued at least one negative use determination for another brine storage pit because he considered it to be a product storage device. *Id.* (citing application #98-4093). The Executive Director, however, makes no real attempt to distinguish his positive use determinations from his negative use determinations. *Compare id.* at 6 (the granted applications had the same liners and leak detection systems as found in Appellant's project) *with id.* at 5 (attempting to distinguish storage and disposal).

While the Executive Director relies on a purported difference between brine disposal pits and brine storage pits, as discussed above, there is no statutory distinction between brine storage pits and brine disposal pits. 16 TEX. ADMIN. CODE § 3.8(a)(2); TEX. NAT. RES. CODE § 91.451. They are the same. Thus, it is perhaps not surprising that

the Executive Director acknowledges four prior determinations that “brine storage pits” were properly characterized as pollution control property. Brief of EC at 6.

These four 100% positive use determinations were granted by the Executive Director in Chambers County alone, where the subject property is located. These projects include the following, many of which involve storage of liquefied petroleum gases:

- ▶ #94-90: construction of a 2,150,000 barrel brine pond to enable brine to be recycled, and the addition of brine injection pumps to provide surplus brine disposal in an off-dome well. App. at 75.
- ▶ #94-653: construction of a brine storage pond for waste minimization and prevention of salt water intrusion into inland waters. App. at 72.
- ▶ #97-2896: updating an existing brine storage pond and adding a new brine storage pond with HDPE liners, leak detection systems, and vapor detection systems with igniters. App. at 53-54.
- ▶ #06-10400: construction of two HDPE double-lined brine ponds. App. at 16.

Additionally, in Brazoria County, the Executive Director granted a 100% positive use determination for a brine pond with pumps and leachate collection system. App. at 77 (#03-7101).

Similarly, the Executive Director has granted positive use determinations in the gas processing/bulk storage industry for HDPE liners and retention ponds. *Id.* at 79. In the mining industry, the Executive Director has granted positive use determinations for brine pond liners and dam/water storage. *Id.* at 81. In the waste disposal industry, the Executive Director has granted positive use determinations for leak detection systems. *Id.* at 82. The Executive Director has also granted positive use determinations for

improvements to existing brine systems. *Id.* at 75 (#95-1217), 53-54 (#97-2896). In sharp contrast, the Executive Director has issued negative use applications for commercial brine ponds because he has characterized those ponds as production property and not pollution control property. *Id.* at 72-73 (#98-4093).

The Executive Director has repeatedly acknowledged that brine ponds and their component parts are legitimate pollution control equipment when used for the storage of liquefied petroleum gases according to state regulation. There is no reasoned basis to distinguish Appellant's pond. It is identical to prior projects that received 100% use determinations and should therefore receive a 100% use determination in this case.

V. The Executive Director Concedes No Statutory Exceptions Apply.

Property is not entitled to a positive use determination if the property is used for residential purposes, is a motor vehicle, or is subject to a tax abatement. TEX. ADMIN. CODE § 17.6(2-4). Likewise, property is not entitled to a positive use determination if it is used to manufacture a pollution control product or to provide a pollution control service. *Id.* § 11.31(a); TEX. ADMIN. CODE § 17.6(1). None of these exclusions apply here, as the Executive Director implicitly concedes in his brief.

Similarly, the Executive Director implicitly concedes that Appellant is seeking a timely use determination. TEX. ADMIN. CODE ANN. § 17.4(a)(1) (requiring post-1994 construction); Brief of ED at 2. Therefore, because Appellant's brine pond is pollution control property that benefits the environment, the Executive Director should have granted a 100% positive use determination.

CONCLUSION

The Chief Appraiser for the Chambers County Appraisal District has not opposed Appellant's use application, an application that fully satisfies the statutory and regulatory scheme. The Office of Public Interest Counsel has opposed a positive use application, but it clearly misunderstands the nature of the project and its component parts. In denying a positive use determination, the Executive Director has ignored virtually identical projects that he previously approved, as well as the factual and legal basis of the subject pond.

For the foregoing reasons and pursuant to 30 TEX. ADMIN. CODE § 17.25(d)(2), Appellant respectfully requests that the Commissioners to remand this matter to the Executive Director for a new determination.

Respectfully submitted,

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