TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 5, 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: **ENERGY TRANSFER FUEL**
TCEQ DOCKET NO. 2007-0903-MIS-U

Dear Ms. Castañuela:

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

Sincerely,

Scott A. Humphrey, Attorney
Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2007-00903-MIS-U

IN THE MATTER OF	§	**BEFORE THE**
USE DETERMINATION	§	**TEXAS COMMISSION**
APPLICATIONS FOR	§	**ON ENVIRONMENTAL**
ENERGY TRANSFER FUEL	§	**QUALITY**

THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO THE APPEAL OF THE EXECUTIVE DIRECTOR'S DECISION

To the Commissioners of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or Commission) files the following response to the appeal of the Executive Director's decisions concerning the above-referenced matter.

1. Background

Energy Transfer Fuel (Energy or Applicant) filed an application with the TCEQ for use determination for pollution control property. The Applicant's business is natural gas transmission. Energy was seeking a use determination for the following: lean burn gas-fired compressor engines; dielectric coatings (cathodic protection and factory installed protective coatings of underground piping systems); automatic line leak detectors (Pipeline inspection gauges or "Pigs"); and surface impoundments (erosion/sedimentation controls).

The Executive Director (ED) of the TCEQ made a positive use determination of 20% for the four lean burn gas fired compressor drivers and a positive use determination of 100% for equipment in the remaining three categories. Freestone Central Appraisal District (Freestone) has appealed the ED's positive use determinations.

2. Analysis

Chapter 17 of Title 30 of the Texas Administrative Code (TAC) 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. If the ED concludes there is an environmental benefit at the site, then the ED must determine if the equipment listed is on the PEL. Equipment is listed on the PEL qualifies for a Tier I determination. If not, then the ED considers if the equipment

qualifies for a Tier II determination or Tier III partial use determination.

Pursuant to the Prop 2 Decision Flow Chart, the ED in this case considered each piece of equipment/process separately. The following is a summary of the ED's analysis:

A. Lean Burn Gas-Fired Compressor Engines

In accordance with the flow chart, the ED identified 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds as the pertinent regulation that requires the installation or construction of the property. The newly constructed compressor station uses state-of the-art technology employing advanced mechanical design and electronic combustion controls (*e.g.*, Caterpillar G3600 gas engine family) to reduce NO_X emissions from compressor station operation for natural gas pipeline transmission and storage activities.

The lean-burn gas-fired compressor engines is number A-57 on the PEL. According to the PEL, the Applicant is entitled to a 20% positive use determination.

B. Dielectric Coatings

The ED identifies the following as the pertinent regulations that require the installation or construction of property: 30 TAC, Chapter 307, Texas Surface Water Quality Standards; Chapter 308, Criteria and Standards for the National Pollutant Discharge Elimination System; and Chapter 327, Spill Prevention and Control. With respect to the process, the ED states that metal dissolution is reduced or slowed through the application of a cathodic current. Such protection is often applied to coated structures exposed to a corrosive environment. Dielectric coatings of underground piping systems, installed during initial construction, as well as factory-installed coal-tar epoxies and enamels used as protective coatings for such underground piping, are used to

control and/or prevent the degradation of metal piping through which the inadvertent release of process product, process water, wastewater or an effluent could be released to surface waters or ground waters in the State.

Dielectric coatings are identified as T-32 on the PEL. According to the PEL, dielectric coatings are entitled to a 100% positive use determination.

C. Automatic Line Leak Detectors

The ED cites the following as pertinent regulations that require the installation or construction of property: 30 TAC Chapter 307, Texas Surface Water Quality Standards: Chapter 308, Criteria and Standards for the National Pollutant Discharge Elimination System; and Chapter 327, Spill and Prevention Control. Pipeline inspection gauges or "Pigs" are tools that are sent down a pipeline and propelled by the pressure of the product in the pipeline to detect pipeline breach and wear. Pigs provide inspection of the condition of pipeline walls (Inline Inspection tools). These additions control and/or prevent the inadvertent product release, through damage or lead in to pipeline, to surface waters or ground waters in the State.

Automatic line leak detectors are identified as T-24 on the PEL. According to the PEL, automatic line leak detectors are entitled to a 100% positive use determination.

D. Surface Impoundments: Erosion/Sedimentation Controls

The ED names the following as pertinent regulations that require the installation or construction of property: U.S. Coastal Zone Act Reauthorization Amendments (CZARA, 1990); 30 TAC Chapter 308, Criteria and Standards for the National Pollutant Discharge Elimination System (NPDES); 30 TAC Chapter 111, Subchapter A, Division 4–Materials Handling,

Construction, Roads, Streets, Alleys and Parking Lots. U.S. CZARA applies to site development and land disturbing activities in the coastal management area of each state where an approved program exists. Large scale land disturbance due to construction activities such as pipeline construction are also covered under U.S. NPDES programs. Required runoff controls are essential to preventing polluted runoff from reaching surface waters of the State. In addition, erosion during and after construction efforts can contribute large amounts of sediment and silt to runoff waters, which can deteriorate water quality and lead to fish kills and other ecological concerns. Environmental controls (*e.g.,* silt fence structures, diking formations and bales) in the form of perimeter barriers for sediment and runoff control at the edge of disturbed areas prevent construction site runoff from moving offsite and fouling surface waters of the State.

Surface impoundments (erosion/sedimentation controls) are identified as S-20 and W-57 on the PEL. According to the PEL, they are entitled to a 100% positive use determination.

Freestone disagrees with the ED's findings. It is Freestone's belief that some, if not most, of the equipment mentioned in the dielectric coatings (cathodic protection) and pig launching/receiving equipment is part of standard production equipment associated with pipelines for many decades and does not qualify for a property tax exemption because it is not for pollution control. It is also Freestone's understanding that the inclusion of cathodic protection as it appears on the PEL was originally intended for gasoline storage tanks at service stations that rarely employed cathodic protection.

OPIC understands that positive use determinations in the "Prop 2" program require the ED to strike a careful balance between the need to provide incentives to businesses to include

pollution control devices and the effect of a positive use determinations on the revenue requirements of counties, specifically as it applies to the collection of tax revenues by appraisal districts. In reviewing the positive use determination appeals, the Commission has continued to stress the importance of stakeholders meetings and the need to update the PEL with input from those who are affected by commission decisions. OPIC also recognizes that the ED has continued to seek such input in assembling the PEL. OPIC also acknowledges that the ED is required to follow the Prop 2 flow chart and make its decision on any application based on the existing PEL.

In conformity with the regulations, the ED has evaluated and concluded that each piece of equipment in each system confers a positive environmental benefit. The ED described the purpose of each system, determined each system's environmental on-site benefit and evaluated the individual pieces of equipment within each system. Moreover, the ED determined that each piece of equipment within both systems fell within the PEL, thereby leading to a Tier I positive use determination.

By arguing that dielectric coatings and pig launching equipment should not receive a positive use determination, Freestone is essentially arguing that this equipment should not be included in the PEL. The ED, however, is responsible for evaluation the application based on the regulations as they exist at the time of the evaluation. OPIC concludes that the ED complied with the regulations for use determination and reasonably concluded that all of the equipment in question was contained in the PEL.

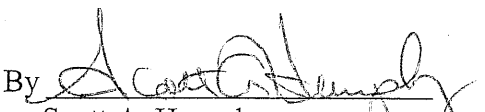
Finally, with respect to cathodic protection, Freestone suggests that a positive use determination should apply only for gasoline storage tanks and not for pipelines. The narrative description alongside the PEL states the exemption applies to tanks and/or piping. Since the PEL description specifically includes piping, OPIC cannot agree with Freestone's limited interpretation of the exemption.

3. Conclusion

Based on our review of this matter, OPIC concludes the Executive Director correctly followed procedures for use determination, and the decision of a positive use determination for the items at issue is consistent with the PEL. OPIC recommends denying the Freestone's appeal and upholding the Executive Director's positive use determination.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 2007, the original and eleven copies of the foregoing were hand delivered to the TCEQ Chief Clerk. True and correct copies were also delivered to those on the attached service list via fax transmission, inter-agency mail, or deposit in the U.S. Mail.

Scott A. Humphrey
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