Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
H. S. Buddy Garcia, *Commissioner*

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2007 SEP 28 PM 2:16
CHIEF CLERKS OFFICE

September 28, 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: **HOUSTON PIPELINE COMPANY**
TCEQ DOCKET NOS. 2006-0961-MIS-U & 2006-0962-MIS-U

Dear Ms. Castañuela:

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

Sincerely,

Garrett Arthur, Attorney
Public Interest Counsel

cc: Mailing List

Enclosure

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2007 SEP 28 PM 2:16
CHIEF CLERKS OFFICE

TCEQ DOCKET NOS.
2007-0961-MIS-U
2007-0962-MIS-U

APPEALS OF EXECUTIVE DIRECTOR'S USE DETERMINATIONS REGARDING HOUSTON PIPELINE COMPANY	§ § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO APPEALS OF USE DETERMINATIONS

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 appeals of the Executive Director's (ED) use determinations regarding Houston Pipeline Company ("Houston Pipeline").

I. Introduction

On May 18, 2007, the ED issued two use determinations for certain equipment owned by Houston Pipeline in Panola and Rusk Counties. For the Panola County equipment, the ED made a 100% positive use determination for the dielectric coatings (cathodic protection), pig (pipeline inspection gauge) launcher/receiver, and the stormwater controls. For the same equipment located in Rusk County, the ED again made a 100% positive use determination. However, the application for Rusk County does not contain a property description for stormwater controls. It therefore appears that stormwater controls were mistakenly included in the use determination for the Rusk County property. Additionally in Rusk County, the ED made a 20% positive use determination for three lean-burn gas-fired compressor drivers. On June 13, 2007, the TCEQ

Chief Clerk's Office received appeals of the ED's use determinations from the Rusk County and Panola County Appraisal Districts. Both appeals assert 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 that has been associated with pipelines for many decades. Both appeals also state that because this equipment is installed for productivity and safety purposes, not pollution control, it does not qualify for a property tax exemption. Finally, both appraisal districts state that their understanding is the cathodic protection included in the TCEQ Predetermined Equipment List (PEL) was originally intended for gasoline storage tanks at service stations. It appears that the Rusk County Appraisal District is not appealing the 20% positive use determination for the lean-burn gas-fired compressor drivers, and therefore, this brief includes no further discussion of the compressor drivers.

II. Analysis

Title 30 of the Texas Administrative Code (TAC), Chapter 17 sets out TCEQ's rules concerning 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 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 and processes considered to be pollution control property. The ED then must run each piece of equipment or process through the flow chart separately. Thereafter, the ED must 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 the 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 in question is on the PEL. Equipment listed on the PEL will qualify for a Tier I determination.

For both counties, the ED states that the equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations. Box 3 of the flow chart is therefore answered in the affirmative. The ED also states that there is an environmental benefit at the site. This results in an affirmative answer for Box 5. Finally, the relevant equipment is listed on the PEL (Box 6) and therefore qualifies for a positive Tier I determination. Using the PEL, dielectric coatings qualify for a 100% positive use determination. The pig launcher/receiver falls under automatic line leak detectors on the PEL and qualifies for a 100% positive use determination. The dielectric coatings and pig launcher/receiver determinations are identical for both counties.

In conformity with the regulations, the ED has evaluated and concluded that these items confer a positive environmental benefit. The ED described the purpose of the items and determined their on-site environmental benefit. Moreover, the ED determined that these items are covered on the PEL, thereby leading to a Tier I positive use determination. The appraisal districts are contending that because this equipment is installed for productivity and safety purposes, not pollution control, it does not qualify for a property tax exemption. Both appraisal districts also believe that the cathodic protection items on the PEL were originally intended for gasoline storage tanks at service stations. The PEL was established by agency rulemaking and through that process the equipment at issue here was included on the PEL. While the appraisal districts may disagree with the inclusion of this equipment on the PEL, it appears that the ED complied with the regulations for use determination and reasonably concluded that the relevant items are contained in the PEL.

The ED made a 100% positive use determination for stormwater controls in both counties. However, only the Panola County application contains a property description of stormwater controls. Stormwater controls are contained in the PEL, and it therefore appears that in the case of Panola County, the ED correctly made a 100% positive use determination for this item. The same 100% positive use determination was made for stormwater controls in Rusk County, but Houston Pipeline's application for Rusk County does not mention stormwater controls, nor did it request a use determination concerning stormwater controls in Rusk County. We conclude that the ED erred in his finding for this item in Rusk County.

III. Conclusion

Based on a review of the appeals, the Chief Clerk's files on this matter, and the applications, OPIC concludes that the ED correctly followed procedures for use determination, and the decision of a 100% positive use determination for dielectric coatings and pig launchers/receivers located in Rusk and Panola Counties is consistent with the PEL. OPIC also concludes that Houston Pipeline should not have received a 100% positive use determination for stormwater controls in Rusk County. Regarding the dielectric coatings and pig launchers/receivers, OPIC recommends that the appeals by the Panola and Rusk County Appraisal Districts be denied. OPIC further recommends that the ED's use determination for Houston Pipeline equipment located in Rusk County be amended to remove stormwater controls from the determination.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 28, 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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