



TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2007 MAY -9 PM 2: 25

CHIEF CLERKS OFFICE

May 8, 2007

**Parker Wilson**  
Managing Counsel  
Environmental/Safety and  
Regulatory Affairs Law

Ms. LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
MC 105  
P.O. Box 13087  
Austin, TX 78711-3087

Re: Appeal of Negative Use Determination for Pollution Control Property Use  
Determination Application No. 06-10283; Valero McKee Refinery  
Gasoline Desulphurization Project

Dear Ms. Castañuela:

Pursuant to 30 TAC §17.25, Diamond Shamrock Refining Company, L.P., a subsidiary of Valero Energy Corporation ("Valero") is hereby filing an appeal of the negative use determination made by the Executive Director of the Texas Commission on Environmental Quality ("TCEQ") with respect to Valero's use determination application (No. 06-10283) for certain pollution control property installed at the Valero McKee Refinery, 6701 FM 119, Dumas, Texas, 79029. A copy of the application and resulting negative use determination is attached to this letter.

On April 18, 2007, the Executive Director denied Valero a positive use determination relating to the refinery's Gasoline Desulphurization project on two grounds. First, the Executive Director determined that the pollution control property (including CDHDS tower, polishing reactor, modified hydro column, storage tanks, heater, vessels, cooling tower, modified reboiler, compressors, and exchangers – all installed and undertaken to comply with a federal mandate to produce low emitting, low-sulfur gasoline) does not "provide an environmental benefit at the site." However, Tax Code § 11.31 contains no prerequisite that the "facility, device, or method for the control of air, water, or land pollution" provide a direct onsite environmental benefit in order to qualify for the pollution control property tax exemption.

Second, the Executive Director found that the pollution control property installed by Valero is used for the purpose of "producing a product which is designed to control air pollution." This is simply not the case. Valero does not manufacture pollution control property, particularly as contemplated by the statute, and therefore it should not be disqualified from receiving a positive use determination with respect to the purchase and installation of the above-referenced pollution control property.

Ms. LaDonna Castañuela

May 8, 2007

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Fundamental fairness, as well as a careful reading of the authorizing statute, dictates that the Proposition 2 tax exemption apply equally to all pollution control properties that are required by the government to be used, constructed, acquired, or installed in Texas. This is so regardless of whether the environmental benefit manifests itself onsite, within the borders of the facility, or offsite, outside the borders of the facility. As a result of the negative use determination, Valero is now presumptively ineligible to seek the property tax exemption to which it is entitled. Valero therefore requests that the Commission take under consideration the Executive Director's initial negative use determination.

I appreciate your time and attention to this matter. Please don't hesitate to contact me at your convenience at (210) 345-5894 should you have any questions or need additional information.

Sincerely,



Parker Wilson

Enc.

Cc: TCEQ  
Tax Relief for Pollution Control Property MC-110  
P.O. Box 13087  
Austin, TX 78711-3087

Roy Martin  
Trey Novosad  
Rich Walsh



Ad Valorem Tax

**Senders Record – Certified Article Number**  
7160 3901 9849 5897 0367  
2007 TCEQ Appl – TX Valero Refineries

January 26, 2007

Texas Commission on Environmental Quality  
MC-214, Cashiers Office  
P.O. Box 13088  
Austin, TX 78711-3088

RE: Application for Use Determination for Pollution Control Property  
McKee Refinery Gasoline Desulphurization Project

Dear Sirs:

In accordance with the Texas Property Tax Code Section 11.31, Diamond Shamrock Refining Company, L.P., a Subsidiary of Valero Energy Corporation, respectfully submits the enclosed pollution control tax exemption application for our McKee Refinery, along with the Tier II application fee of \$1,000. This pollution control project was federally mandated by the Environmental Protection Agency, and will successfully eliminate the vast majority of the sulphur content from the product pool produced at our Moore County location.

This increasingly efficient process of sulphur reduction will continue to improve air quality by reducing sulphur emissions resulting from the combustion of petroleum products.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Trey Novosad", written over a horizontal line.

Trey Novosad  
Director – Ad Valorem Tax

TNN:srk

Enclosure

Valero Services, Inc

P.O. Box 696000  
San Antonio, TX 78269-6000

JPMorgan Chase Bank, N.A.  
Syracuse, NY

51813260

50-937  
213

Date  
01/30/2007

Amount  
\*\*\*\*\*1,000.00\* USD

PAY \*\*\*\*\*1,000 DOLLARS 00 CENTS  
EXACTLY AND

PAY  
TO THE  
ORDER OF:

STATE OF TEXAS  
TX COMMISSION ON ENVIRON QUALITY  
DBA TCEQ  
FINANCIAL ADMIN  
PO BOX 13088 MC-214  
AUSTIN TX 78711-3088

VEC A/P DISBURSEMENTS

*Michael S. Cukowski*

VOID AFTER SIX MONTHS  
Authorized Signature

⑈51813260⑈ ⑆021309379⑆601855950⑈

"PAYMENT SUBJECT TO VERIFICATION AND RIGHT TO RECOVER IMPROPER CHARGES"	THE ATTACHED CHECK IS IN FULLPAYMENT OF ITEMS STATED. ENDORSEMENT MUST BE IDENTICAL WITH THE PAYEE DESIGNATED.	DETACH AT PERFORATION BEFORE DEPOSITING AND RETAIN FOR YOUR FILES
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2009044  
VENDOR NUMBER

Valero Services, Inc  
P.O. Box 696000 San Antonio TX 78269-6000

Invoice Date	Invoice Number	Voucher Document	Deductions	Gross amount
01/26/2007	07AFE MK03-21210	3100115910	0.00	1,000.00
STATE OF TEXAS (TCEQ)/418-AVT-Other Outside Servi				
Sum total			0.00	1,000.00

Payment Document 2002369947	Check Number 51813260	Check Date 01/30/2007	Currency USD	Payment Amount *****1,000.00*
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RA

DESCRIPTION/PURPOSE:  
OF GASOLINE DESULPHURIZATION PROJECT  
AT VALERO'S MCKEE REFINERY

EPA required that the sulphur content in gasoline be reduced to 80 PPM in 2006. Valero evaluated seven technologies and selected C.D. Tech as the most effective method to minimize octane loss and yield loss, which run about 50% of overall operating costs of \$1.17 per barrel. Based on the design octane loss of  $.8R + M/2$ , with this method, estimated gasoline volume loss is 1,320 BPD.

Other technologies evaluated included UOP's ISAL, Phillip's SZORB, IFP's Prime G+, Mobil's Octgain, and Exxon's Scafining.

Valero Energy Corporation, in compliance with federally mandated desulphurization requirements, and at great expense, has revamped its Hydrodesulphurization Units at our McKee refinery and incorporated one existing hydro column into the new design.

Because of the high-feed sulphur and high-feed olefin content, a 2-stage treatment was necessitated. An additional CDHDS tower was required.

The first stage is the CDHDS column which removes the bulk of the sulphur, and at the second stage the product is further decontaminated by use of a new polishing reactor.

This project required the installation of new storage tanks, heaters, vessels, a cooling tower, and a catalyst, and the conversion of a reboiler. Additionally, Valero was required to erect additional compressors, exchangers, extensive piping, and the logistical infrastructure necessary to support this pollution control equipment.

Overall, octane loss is 1.4 to 1.6 numbers, while across the CDHDS portion alone the loss is 3.3 numbers. We successfully lowered the sulphur content of the FCC gasoline to under 30 PPM from the previous count of 1500 PPM. We are currently processing 35,000 BPD of gasoline at this refinery.

EQUIPMENT LIST  
GASOLINE DESULPHURIZATION PROJECT-MCKEE REFINERY

- CDHDS Tower
- Polishing Reactor
- Modified Hydro Column
- Storage Tanks
- Heaters
- Vessels
- Cooling Tower
- Modified Reboiler
- Compressors
- Exchangers

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
APPLICATION FOR USE DETERMINATION  
FOR POLLUTION CONTROL PROPERTY**

The Texas Commission on Environmental Quality (TCEQ) has the responsibility to determine whether a property is a pollution control property. A person or political subdivision seeking a use determination for pollution control property must complete the attached application or use a copy or similar reproduction. For assistance in completing this form refer to the TCEQ guidelines document, *Property Tax Exemptions for Pollution Control Property*, as well as 30 TAC §17, rules governing this program. For additional assistance please contact the TCEQ Tax Relief for Pollution Control Property Program at 512/239-6348. The application should be completed and mailed, with the appropriate fee, to: TCEQ MC-214, Cashiers Office, P.O. Box 13088, Austin, Texas, 78711-3088.

**1. GENERAL INFORMATION**

A. What is the type of ownership of this facility?

- Corporation                       Sole Proprietor  
 Partnership                         Utility  
 Limited Partnership    Other \_\_\_\_\_

B. Size of company: Number of Employees

- 1 to 99  
 100 to 499  
 500 to 999  
 1,000 to 1,999  
 2,000 or more

C. Business Description: (Provide a brief description of the type of business or activity at the facility)

The refinement of crude petroleum to produce gasoline.

**2. TYPE OF APPLICATION**

A.  Tier I \$150 Application Fee

If all property listed in Section 8 of this application is on the predetermined equipment list (PEL) or is necessary for the installation or operation of equipment on the list, then check this box.

B.  Tier II \$1,000 Application Fee

If any property listed in Section 8 is not on the PEL, and all of this property is used 100% for pollution control, then check this box.

C.  Tier III \$2,500 Application Fee

If any property listed in Section 8 is not on the PEL and if a partial use determination is being requested for ANY of the property included in the application, then check this box.

*NOTE: Enclose a check or money order to the TCEQ along with the application to cover the required fee.*

**3. NAME OF APPLICANT**

A. Company Name: Diamond Shamrock Refining Company, L. P.

B. Mailing Address (Street or P.O. Box): PO Box 690110

C. City, State, ZIP: San Antonio, TX 78269

**4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION**

A. Name of Facility or Unit: McKee Refinery

B. Type of Mfg. Process or Service: Petroleum Refinery

C. Street Address: 6701 FM 119

D. City, State, ZIP: Dumas, TX 79029 Moore County

E. Tracking Number Assigned by Applicant (Optional): N A

F. Company Number or Registration Number: \_\_\_\_\_

(Required)

**5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY**

A. Name of Appraisal District: Moore County Appraisal District

B. Appraisal District Account Number: New Account

**6. CONTACT NAME (must be provided)**

A. Company/Organization Name: Valero Energy Corporation

B. Name of Individual to Contact: Trey Novosad

C. Mailing Address: PO Box 690110

D. City, State, ZIP: San Antonio, TX 78269-0110

E. Telephone number and fax number: 210-345-2700 fax:210-345-2495

F. E-Mail address (if available): Trey.Novosad@Valero.com

**7. RELEVANT RULE, REGULATION, OR STATUTORY PROVISION**

For each of the pollution control properties listed on this application, select the type of medium or media (air, water, waste) for which the property or device is required. Use the second column to cite the specific environmental rule, regulation, and/or law that is being met or exceeded by the installation of this property. The citation should be specific and should include the section and/or subsection of the rule, regulation, and/or law. Do not list permit numbers or registration numbers in this table. If the property or equipment was installed or constructed in response to an agreed order, do not list the order — list the rule, regulation, or law that requires the installation or construction of the property.

MEDIUM	RULE/REGULATION/LAW
Air	40 CFR, PART 80, REGULATION OF FUELS AND FUEL ADDITIVES, SUBPART H, GASOLINE SULPHUR
Water	
Waste	

**8. DESCRIPTION OF PROPERTY (Complete for all applications)**

Provide a description and purpose of the property for which this application is being filed. This description must include the anticipated environmental benefits for the prevention, monitoring, control, or reduction of air, water, or land pollution that will be realized by the installation of the property. Do not simply repeat the description from the predetermined equipment list. Instead describe the property and how it will be used at your facility. Include sketches of the equipment and flow diagrams of the processes where appropriate.

Land: If a use determination is being requested for land, provide a legal description and an accurate drawing of the property in question. Only that land which is actually used for pollution control purposes or that houses pollution control property is eligible for a positive use determination.

Used Equipment: If the property identified above has been purchased from another owner who previously used the property as pollution control property. Provide information that shows that the property was not taxable on or before January 1, 1994, by any taxing unit in which the property is now located.

## 9. DECISION FLOWCHART

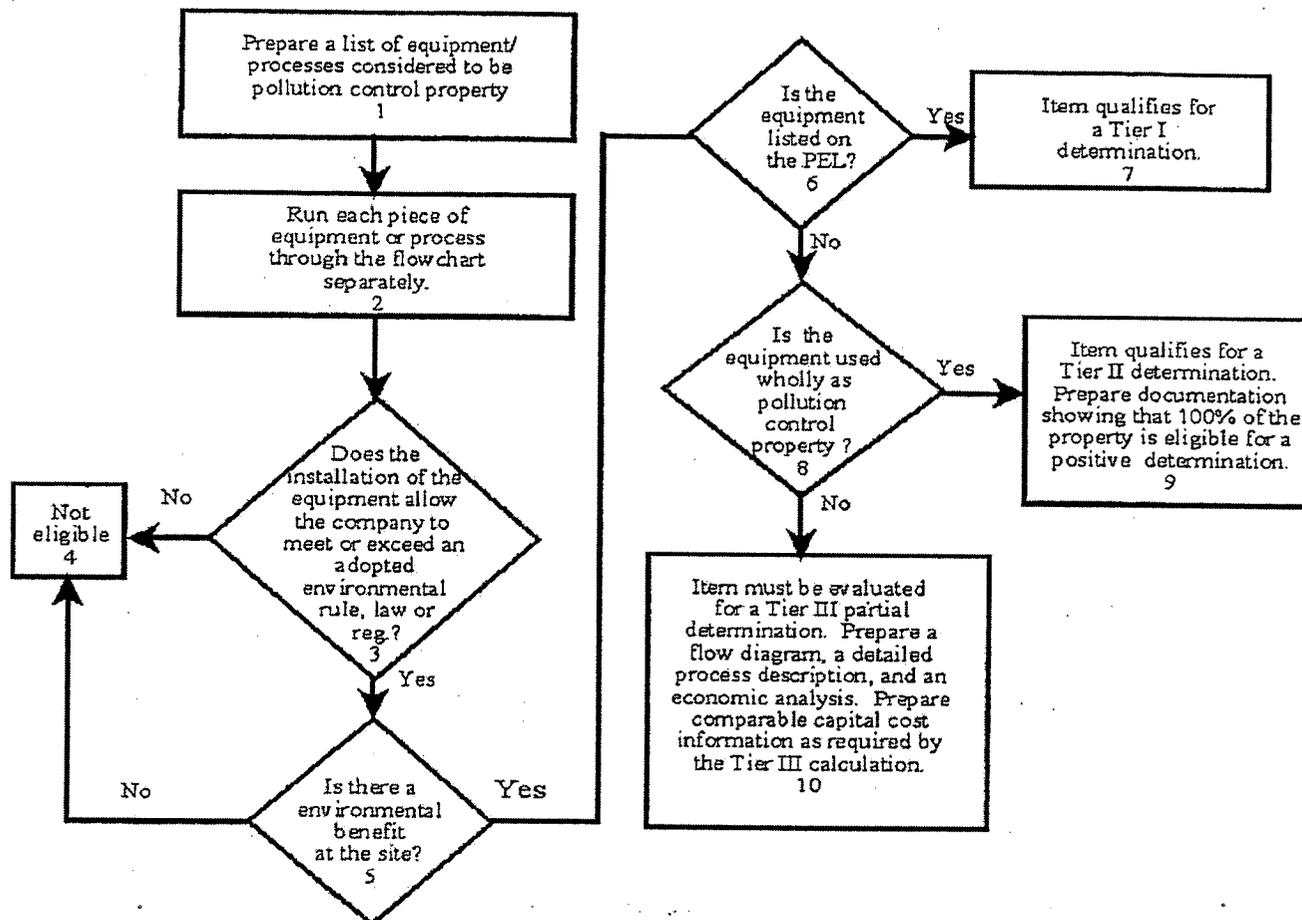
Each piece of equipment or process change must be processed through the following Decision Flow Chart. Each item of property listed on the application must result in a yes answer to boxes 3 and 5. Use the table in section 11 to document which box (7, 9 or 10) was the final destination of each piece of equipment.

The following instructions should be used with the flow chart. The numbered items below do not correspond to the box numbers in the flow chart.

1. Prepare a list of all process equipment and pollution control equipment that is considered to be pollution control property.
2. Each item on the list must be run through the flow chart separately. Some items will likely end at different points on the flow chart.
3. Determine whether the item is required to meet or exceed a state, local, or federal environmental regulation, rule or law. If no specific rule citation can be made, then this item does not qualify as pollution control property (Box 4).
4. Determine if there is an environmental benefit at the site where the equipment item is installed. A yes answer to this question is needed to continue evaluating the equipment. If the answer is no, then the equipment does not qualify (Box 4).
5. If the equipment is listed on the Predetermined Equipment List (PEL), then it qualifies as Tier I (Box 7). Determine the appropriate PEL number for each item.
6. Specify all PEL equipment for the project in a single list that is included with the application.
7. If the equipment is not on the PEL, then determine whether the equipment is used wholly for pollution control, i.e., the equipment is not production related and/or does not increase production or improve product quality.
8. If it is wholly for pollution control, then the equipment may qualify as 100% pollution control property under Tier II (Box 9). The applicant must provide sufficient written documentation and justification to prove that it qualifies.
9. If the equipment has both environmental and production elements, then the equipment must be evaluated as a Tier III partial determination (Box 10). The applicant must provide a detailed capital cost analysis following the procedures established in the Partial Determinations section of this document. The results of these calculations will determine the partial use percentage.

## Prop 2 Decision Flow Chart

Applicants must use this flowchart for each piece of equipment or process. In order for a piece of equipment or process to be eligible for a positive use determination the item must generate 'yes' answers to the questions asked in boxes 3 and 5.



### 10. PARTIAL PERCENTAGE CALCULATION

This section is to be completed only for Tier III applications. Process changes or construction of new process equipment that results in pollution control may result in a partial determination. On one or more separate sheets of paper, explain how the partial percentage was determined using the Cost Analysis Procedure that is described in the attached *Instructions for Completing Application Form*. Include financial data that demonstrates how this percentage was calculated. Provide as detailed information as possible, since the information provided will be used by the TCEQ to evaluate the use percentage requested in the application. Attach sketches and/or flow diagrams showing the property and its function. Examples of partial determinations are shown in Appendix C of the technical guidance document.

### 11. PROPERTY CATEGORIES AND COSTS

Identify the category and the estimated purchase cost of the property listed in Section 8. List each piece of property for which a use determination is being sought. If the application is for property that is listed on the predetermined equipment list, list the appropriate item number(s) in the PEL column. Place an "N" in the second column to certify that the property was not taxable on or before January 1, 1994. Failure to answer this question for each piece of property will result in the issuance of a notice of deficiency letter and the possible rejection of the application. List

the which box, (7, 9, or 10), was the final destination of each piece of property. List the estimated or actual purchase cost of the property. If the property is not wholly used for the purpose of pollution control, list the estimated percentage of pollution control calculated using the Partial Determination Cost Analysis Procedure.

Property McKee Refinery	Property Taxable on or Before 1/10/94	Decision Flow Chart Box 7, 8, or 10	PEL Number	Estimated Purchase Cost	Partial Percentage
Land					
Property GASOLINE HYDRODESULPHURIZATION	N	9*	NA	\$99,380,200	100%
Totals				\$99,380,200	

#### 12. EMISSION REDUCTION INCENTIVE GRANT

Will an application for an Emission Reduction Incentive Grant be filed for this property/project:

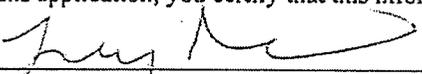
Yes  No

#### 13. APPLICATION DEFICIENCIES

After an initial review of the application, the TCEQ may determine that the information provided with the application is not sufficient to make a use determination. The TCEQ may send a notice of deficiency, requesting additional information that must be provided within 30 days of the written notice.

#### 14. FORMAL REQUEST FOR SIGNATURE

By signing this application, you certify that this information is true to the best of your knowledge and belief.

NAME:  DATE: 01/26/2007

TITLE: DIRECTOR - AD VALOREM TAX

COMPANY: VALERO ENERGY CORPORATION

\* Valero believes the subject property complies with the statutory requirements for a Pollution Control Property Tax Exemption.

Under Texas Penal Code, Section 37.10, if you make a false statement on this application, you could receive a jail term of up to one year and a fine up to \$2,000, or a prison term of two to 10 years and a fine of up to \$5,000.

Kathleen Hartnett White, *Chairman*  
Larry R. Soward, *Commissioner*  
H. S. Buddy Garcia, *Commissioner*  
Glenn Shankle, *Executive Director*

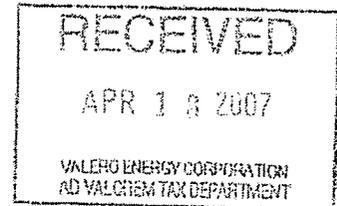


## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

April 18, 2007

VALERO ENERGY CORP  
TREY NOVASAD  
PO BOX 690110  
SAN ANTONIO TX 78269 0110



This letter is to inform you that the technical review of Use Determination Application, 06-10283, for:

DIAMOND SHAMROCK MCKEE REFINERY  
6701 FM 119  
DUMAS TX 79029

has been completed. The outcome of this review is as follows:

A negative determination for this project. This application is for equipment installed in order to meet 40 CFR 80: Regulation of Fuels and Fuel Additives. This regulation requires refiners of gasoline and diesel to reduce the sulfur content in their end products. In order to qualify for a positive use determination the property in question must be processed through the Decision Flow Chart (DFC) (30 TAC 17.25). In order for the property to successfully process through the DFC, 'yes' answers must be the result of evaluating the property against boxes 3 and 4. A yes answer is received for Box 3 since 40 CFR 80 is considered to be a valid adopted rule. Box 4 requires that the installation and use of the property produces an environmental benefit at the site. When we evaluate low sulfur fuel projects with regard to Box 4 of the DFC we receive a 'no' answer. The environmental benefit of these projects occurs when the consumer uses the low sulfur content fuels. These projects do not provide an environmental benefit at the site and as projects are not eligible for positive use determinations.

Section 11.31(a) of the Tax Code reads 'A person is not entitled to an exemption from taxation under this section solely on the basis that the person manufactures or produces a product or provides a service that prevents, monitors, controls, or reduces air, water, or land pollution.' The equipment listed on this application is used for the purpose of producing a product which is designed to control air pollution, the Tax Code excludes this equipment from being eligible for a positive determination.

House Bill 3121, enacted during the 77th Legislature Session, established a process for appealing a use determination. The Texas Commission on Environmental Quality (TCEQ) rules that implement the appeals process are at 30 TAC 17.25. Pursuant to 17.25(a)(1), an appeal must be filed within 20 days of receipt of the use determination. Should you choose to appeal the use determination, please submit a copy of your appeal to the TCEQ Tax Relief for Pollution Control Property program at the time of filing the appeal with the Chief Clerk of the commission. If you have any questions or require any additional information please contact the TCEQ Tax Relief for Pollution Control Property program at (512) 239-6348.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Hatlett".

Ronald L. Hatlett  
Tax Relief for Pollution Control Property Program

**TAX RELIEF FOR POLLUTION CONTROL PROPERTY: TECHNICAL REVIEW DOCUMENT**

Reviewed By: RLH

App. No.: 06 - 10283

Review Start Date: 3/6/2007

Company Name: DIAMOND SHAMROCK REFINING COMPANY LP

Facility Name: DIAMOND SHAMROCK MCKEE REFINERY

**TIER LEVEL**

What Tier is this application? The application was filed as a Tier II application.

The equipment listed on this application is not located on the predetermined equipment list. Therefore it is not a Tier I application. Further review is required in order to determine if it is correctly filed as a Tier II or if it should be a Tier III.

**RELEVANT RULE, REGULATION, OR STATUTORY PROVISION**

The rule listed in the application is:

40 CFR 80 H

40 CFR 80 H: AIR PROGRAMS, REGULATION OF FUELS AND FUEL ADDITIVES, Subpart H--GASOLINE SULFUR. This is a valid rule.

**DESCRIPTION OF PROPERTY**

Description: Is an adequate description and purpose of the property provided? Does it list the anticipated environmental benefits? Are sketches and flow diagrams provided if needed?

The property is described as:

Gasoline Desulphurization Project (Equipment List): CDHDS Tower; Polishing Reactor; Modified Hydro Column; Storage Tanks; Heaters; Vessels; Cooling Tower; Modified Reboiler; Compressors; and Exchangers.

The description is adequate.

**DECISION FLOWCHART**

Mark the appropriate boxes: Box 3 Y Box 5 N Box 6 Box 8 Box 10

Reason this box was chosen:

This project does not make it through Box 5 with a yes answer.

**TIER III APPLICATIONS**

Did the applicant use the CAP? Recalculate the CAP. Does your calculation agree with the applicants?

There is no Tier III calculation provided.

**PROPERTY CATEGORIES AND COSTS**

Is the table completed correctly? Has the applicant certified that all listed property became taxable for the first time after January 1, 1994? Is all information necessary for conducting the technical review included.

Yes

**TECHNICAL REVIEW**

Is the application technically complete? If the answer is no, what is missing? Provide the language used in the NOD letter. If yes then develop the use determination language.

Technically complete when received: N

1st NOD: See file

**NOD RESPONSE**

1st NOD: Disagree that there is not any environmental benefit at the site.

Full Property Description:

Gasoline Desulphurization Project (Equipment List): CDHDS Tower; Polishing Reactor; Modified Hydro Column; Storage Tanks; Heaters; Vessels; Cooling Tower; Modified Reboiler; Compressors; and Exchangers.

DETERMINATION

Provide the reason for your determination.

Equipment fails to make it through Box 5 of the DFC. Under the rules there is only one possible outcome. An additional reason for the negative determination is 11.31a of the Tax Code. Which states that a person is not entitled to a positive determination for producing a product which controls pollution.

Provide the language for the final determination.  
A negative determination for this project.

\*\*\*\*\* ED Approval Required: N \*\*\*\*\*

Reviewed by: *Gary E. McArthur*

Date: 4/13/2007

Peer Reviewed By: *Ronald A. Hallett*

Date: 4/13/2007