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October 26, 2012

Docket Clerk
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

VIA HAND DELIVERY

Re: Use Determination Application No. 07-11971
TCEQ Docket No. 2008-0832-MIS-U
Borger Energy Associates, LP For the Blackhawk Cogeneration Facility

Dear Sir/Madam:

Enclosed please find the original and 8 copies of the Response Brief of Appellant Borger Energy Associates, LP in connection with the above referenced matter. Please file the attached and return the endorsed copy to our courier.

We are providing copies of this response brief to the individuals and entities identified on the Commission's mailing list from Docket No. 2008-0832-MIS-U.

Please contact our office should you have any questions. Thank you for your assistance.

Very truly yours,

Thomas A. Countryman

TAC/kad
Enclosures

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TCEQ Docket No. 2008-0832-MIS-U

In The Texas Commission on Environmental Quality

APPEAL OF THE EXECUTIVE DIRECTOR'S NEGATIVE USE DETERMINATION ISSUED TO BORGER ENERGY ASSOCIATES, LP FOR THE BLACKHAWK COGENERATION FACILITY

USE DETERMINATION APPLICATION NO. 07-11971

RESPONSE BRIEF OF APPELLANT BORGER ENERGY ASSOCIATES, LP

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2012 OCT 26 AM 11:50
CHIEF CLERKS OFFICE

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

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INTRODUCTION AND STATEMENT OF THE CASE

Prompted by environmental and business concerns, Texans amended their Constitution in 1993 to allow an *ad valorem* property tax exemption for any "facility, device, or method for the control of air, water, or land pollution." TEX. CONST. art. VIII, § 1-*l*(a); Tex. H.J. Res. 86, 73d Leg., R.S., 1993 Tex. Gen. Laws 5576. In the same year, the Texas Legislature authorized the tax exemption and created a process for obtaining it. *See* Act of May 10, 1993, 73d Leg., R.S., ch. 285, 1993 Tex. Gen. Laws 1322 (current version at TEX. TAX CODE § 11.31).

Section 11.31 of the Tax Code requires local appraisal districts to assess a value and administer the tax exemption based on the Texas Commission on Environmental Quality's ("TCEQ") determination of whether property qualifies wholly or partly as pollution control. TEX. TAX CODE § 11.31(d), (i). The Executive Director ("ED") of the TCEQ makes the initial "use determination," which can be appealed to the TCEQ, and TCEQ's order can be appealed to the district courts of Travis County. *Id.* § 11.31(e); TEX. WATER CODE § 5.351, § 5.354.

On May 1, 2008, the ED awarded Applicant Borger Energy Associates, LP ("Borger") a 100% Positive Use Determination (the "ED's Original Decision") on its Application No. 07-11971 (the "Application") for a Positive Use Determination[1] for the HRSGs located at Borger's Blackhawk Station Cogeneration Facility ("Blackhawk").[2] *See* Affidavit of Mona Caesar Johnson, P.E. ("Johnson Aff."), attached as Exhibit "A" and incorporated herein for all purposes by reference, ¶2, Ex. 3. The ED's Original Decision was accompanied by an appropriate Technical Review Document ("Borger TRD") evaluating and discussing the ED's reasons for his Original Decision. *See* Johnson Aff., ¶2, Ex. 4. At the same time, the ED awarded 19 other 100% Positive Use Determinations to various other owners of HRSGs, all of which ultimately become final and non-appealable. *See* Affidavit of Rhonda Gueringer ("Gueringer Aff."), attached as Exhibit "B" and incorporated herein for all purposes by reference, ¶3, Exs. 1-19.

On May 23, 2008, however, the Hutchinson County Appraisal District ("County") appealed the ED's Original Decision concerning Borger's Application[3] to the TCEQ. On December 3, 2008, after massive briefing by the parties[4] and lengthy consideration by the ED and his Work Group -- *see, e.g.,* Johnson Aff., ¶4, Ex. "6," the ED's 12/3/08 Response Brief

---

[1] Under Texas law, a final Positive Use Determination results in a non-discretionary requirement that County Assessors and Appraisal Districts afford the subject property a corresponding Pollution Control Exemption from *ad valorem* taxation. *See, e.g.*, TEX. TAX CODE §11.31(d), (i).

[2] Blackhawk is a cogeneration facility which uses heat recovery steam generators ("HRSGs") in combination with natural gas powered turbines to generate steam which is transported and sold to the nearby Wood River Borger Refinery (the "Refinery") for use in Refinery operations.

[3] *See* Johnson Affidavit, ¶2, Ex. 2. As supplemented by the Johnson Affidavit itself, the Application is incorporated herein for all purposes.

[4] TCEQ's own Public Interest Counsel filed a Response ("PIC Response") to the ED's Original Decision on December 5, 2008. *See* Johnson Aff., ¶4, Ex. 5. Under the Texas Water Code, the role of the PIC is described as follows:

> § 5.271 WATER Creation and General Responsibility of the Office of Public Interest Counsel. The office of public interest counsel is created to ensure that the commission promotes the public's interest. The primary duty of the office is to represent the public interest as a party to matters before the commission.

("ED Response Brief"), p. 10 -- the ED sought remand of Borger's and all other, then-pending HRSG-related appeals of his prior 100% Positive Use Determinations under "Tier IV."[5] *See, i.e.,* 30 TAC §17.2(16) (*eff.* 2/7/2008).[6] As the sole basis for remand, the ED affirmatively represented that "The Executive Director ***intends to apply the adopted recommendation to all subsequently filed similar use determination applications, and to those applications currently pending adjudication***." *See* ED Response Brief, p. 11, emphasis added. That recommendation, described by the ED as a "modified version of the calculation presented by Cummings Westlake," was as follows:

> The thermal efficiency increase or production gain derived from the installation of a HRSG is approximately 39%. Since this percentage represents the additional amount of electrical energy produced for a given heat input, it therefore represents the production value of the equipment. Based on this production value, the pollution control percentage of a HRSG installed at a combined-cycle facility is 61%. ***Staff is therefore recommending the positive use determination of 61% for the installation of a HRSG in a combined-cycle facility.***
>
> *Id.* [emphasis in original].

Notwithstanding the foregoing, on July 10, 2012, after remand was finally, purportedly granted by the General Counsel of TCEQ,[7] *see* Johnson Aff., ¶6, Exs. 7-8, the ED rendered

---

[5] These did not include the above-described 20 Positive Use Determinations which, by then, had become final. They only included other HRSG-related "Tier IV" 100% Positive Use Determinations by the ED which, like Borger's, had been timely appealed by the various Appraisal Districts and/or Counties impacted. As indicated above, also involved in the overall "HRSG exemption" controversy – but *not* this particular appeal - are a number of "Tier III" HRSG-related Applications for which 100% Negative Use Determinations were made originally by the ED and appealed by the HRSGs' owners based on amended regulations (*e.g.,* Tier IV was eliminated in 2010) having no bearing on this case.

[6] For reasons stated in Section II. A., below, all references to statutes and regulations refer to those in effect at the time Borger's Application was deemed administratively complete in April, 2008, unless otherwise specifically noted.

[7] The General Counsel's Remand was improper. Even TCEQ's own Public Interest Counsel ("PIC") agrees that, "The Tax Code does not appear to give the Commission the authority to remand a use determination appeal before considering the appeal at the next practical Agenda meeting." *See* October 4, 2012 Response to Negative Use Determination ("PIC 2012 Response," on file herein), p. 8 (*citing Denton County Elec. Coop., Inc. v. Pub. Util. Comm'n of Texas,* 818 S.W.2d 490 (Tex. App.-Texarkana 1991, writ denied), and TEX. TAX CODE §11.31(e) ("The commission shall consider the appeal at the next regularly scheduled meeting of the commission for which adequate notice may be given,"). Borger had a vested right to the consideration of the full TCEQ in 2008 when the County's appeal of the ED's Original Decision was perfected. TEXAS TAX CODE §11.31(e); 30 TAC §17.25(d)(2) (2007). Thus, TCEQ's 2010 enactment of new 30 TAC §17.25(d), *see* ED's 2102 Response, p. 13-14, came too late to affect this appeal. *See, e.g,* Section II.A., below and PIC 2012 Response, p. 8 ("Appellant submitted its application for a Tier IV use determination on March 25, 2008, so the 2010 amendments to Chapter 17 do not apply to this application, including [new] 30 TEX. ADMIN. CODE§ 17.25(d)."). The ED's reliance, *see* ED's 2012 Response, p. 13, on 30 TAC §10.4(d) ("The general counsel may remand a matter *from the commission's agenda* to the executive director if the executive director or the public interest counsel requests a remand," emphasis added) is undercut by all the above, as well as by the fact that this appeal was not on TCEQ's Agenda at or near the time of General Counsel's remand. *See* Gueringer Aff., ¶4, Exs. 20-21. Finally (*see* ED's 2012 Response, p. 12), there is no evidence herein of any actual statutory or TCEQ delegation of remand power to General Counsel which could have affected Borger's Application under Texas Water Code §5.110(d). There is a remedy for all this, as well: what TCEQ should be hearing, if anything at this late date, is the County's appeal of the ED's Original Decision, and the

uniform, 100% Negative Use Determinations concerning all pending Tier IV *and* Tier III HRSG-related appeals of Applications for Use Determinations (the "ED's Appealed Decision"), but only on the stated basis that, "Heat recovery steam generators are used solely for production and, therefore, are not eligible for positive use determination." *See, e.g.,* Johnson Aff., ¶7, Ex. 9, ED's 7/10/12 Notice of Negative Use Determination, Borger Energy Associates, LP, Application No. 07-11971. Tellingly, the ED's Appealed Decision (at least, as transmitted to Borger) was not accompanied by any Technical Review Document – new or revised - showing any justification for the changed ruling. *See* Johnson Aff., ¶6; *cf.* 30 TAC §17.25(e)(1)(A), and Johnson Aff., ¶2, Ex. 4; *see also* Section I. B., *infra.*

Borger timely perfected its appeal of the ED's Appealed Decision by filing its Notice of Appeal on July 30, 2012. *See* Johnson Aff., ¶4, Ex. 10. Reply briefs subsequently were filed by the ED and the County. *See, e.g.,* ED's October 4, 2012 Response to the Appeals Filed on the Negative Use Determination for the Heat Recovery Steam Generator Applications ("ED 2012 Response") on file herein. Now, in accord with the briefing schedule set out by TCEQ, and in supplementation of its Application, Borger files this, its Response Brief to the reply Briefs of the County and the ED.

I. THE ED'S APPEALED DECISION IS FATALLY FLAWED ON ITS FACE.

A. The ED's Appealed Decision is devoid of required factual basis and reasoning.

Borger's Application should be remanded back to the ED for a decision consistent with statutory requirements and a new technical review and new use determination that fully lay out the method and formulae used to reach the correct percentages for the use determination. *See* 30 TAC §17.25(d)(1) and 30 TAC §17.25(e)(1)(A). The ED's Appealed Decision runs afoul of the very same problem repeatedly cited by TCEQ's own Public Interest Counsel ("PIC") back in December, 2008:

> We take no position on the merits of the Appellant's issues with the ED's Decision at this time because we find that ***the ED provided no basis for the percentages he concluded were appropriate***. Based on the limited information in the record, we conclude that, while the ED may reject an applicant's proposed formula for determining the percentages of equipment associated with pollution control, he must provide an explanation of the specific method and analysis used to determine the percentages he recommends. For this reason, OPIC [Office of Public Interest Counsel] recommends that the Commission remand this matter for a new technical review and new use determination that fully lays out the method and formula used to reach the correct percentage for the use determination.
>
> *See* Johnson Aff., Ex. "5," PIC Response, pp. 2 (emphasis added).

ED's Appealed Decision should be regarded as a nullity. This is but one more reason, among the many others described herein, that this matter should be given the "fresh start" of remand.

Using TCEQ's standards in 2012 when evaluating the ED's Appealed Decision, TCEQ's PIC confirmed nothing has changed:

> ...[T]he July 10, 2012 letter [the ED's Appealed Decision] provides no information as to why the ED no longer considers HRSGs pollution control equipment....
>
> *See* October 4, 2012 Response to Negative Use Determination ("PIC 2012 Response," on file herein), p. 12.[8]

B. The ED affirmatively abandoned all required factual basis and reasoning.

Clearly, the ED has now abandoned not just his reasoning and calculations in the Borger TRD and his heavily-considered and analyzed "61% solution" (notwithstanding Work Group analysis and input), but ***all*** of his 19 prior, final 100% Positive Use Determinations and supporting calculations, in favor of a single conclusory declaration. *See* Johnson Aff., ¶6, Ex. 9. However, after remand, the ED did not conduct or prepare any new technical review of the Application, in clear violation of 30 TAC §17.25(e)(1):

> If the commission remands a use determination to the Executive Director, the Executive Director ***shall***:
>
> (A) conduct a new technical review of the application which includes an evaluation of any information presented during the commission meeting[9]; and
>
> (B) upon completing of the technical review, issue a new determination....

Instead, on July 9, 2012, the ED merely prepared a so-called "***Application*** Review Document." (*See* attached Exhibit "C" ("Borger TRD"), previously produced in Attachment "B" to the ED's 2012 Response) the Borger TRD simply noted and reiterated – without any new factual findings or basis -- the ED's Appealed Decision that, "Heat recovery steam generators are used solely for production and, therefore, are not eligible for positive use determination."[10] As important, the Borger ARD established it was *not*, in fact, a new technical review required by 30 TAC §17.25(e)(1) by expressly noting "Technical Review Completion Date: 04/30/2008." *Id.* This was the date the original Borger TRD was completed, and the Borger TRD actually led to the ED's Original Decision and Borger's 100% Positive Use Determination. Obviously, the ED's Appealed Decision is totally undermined if the Borger TRD is the only technical review

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[8] Borger disagrees with and denies the PIC's contention that, somehow, the ED can cure this deficiency before TCEQ in this appeal hearing. The ED has done what he has done, and that is the subject of this appeal. The curing, if any, of this "no basis" deficiency can only come through remand, and the required, new technical review applicable specifically to Borger's HRSGs. *See* 30 TAC §17.25(d)(1) and 30 TAC §17.25(e)(1)(A), and Section I. B., below.

[9] In further support of footnote 8, above, it is instructive to note that new information presented during the commission meeting on the appeal is only to actually be evaluated *after* remand. Thus, while "new" evidence can support a remand, only the ED's Appealed Decision and any accompanying new Technical Review Document, if any (there was none, *see* below), can support affirmance of the ED's Appealed Decision.

[10] Compounding this problem, the ED did not provide Borger a copy of the Borger ARD, although Borger did receive a copy of the Borger TRD.

supporting it; the two are patently contradictory and irreconcilable. Therefore, at the very least, this case must be remanded for a new technical review pursuant to 30 TAC §17.25(e)(1)(A).

As the ED admits in his 2012 Response, multiple parties, including Borger, have submitted and are continuing to submit specific, "custom" calculations and rationale to support various relevant considerations and, at least, ***some*** partial use determinations for HRSGs which neither the ED nor TCEQ can ignore. *See, e.g.,* Johnson Aff. ¶¶8-10; ED's 2012 Response, p. 14-15. All parties need to know precisely what considerations went into the ED's Appealed Decision in order to know specifically what reasoning to challenge in this controversy.[11] The sole, stated basis flies in the face of the law and evidence (all as discussed below), but even more important to the question of remand, the ED cites absolutely no specific evidence to support his conclusion. The ED's Appealed Decision fails to provide adequate – much less, the *required* - notice of either the data or calculations, if any, relied upon; thus, the ED's decision should be remanded once again so that all Applicants are given fair notice of the specific data, calculations and other reasoning they need to appeal. Consistent with 30 TAC §17.25(e)(1)(A), the fundamental fairness required by the due process clause of the Texas Constitution also required the ED to explain the basis for the his Appealed Decision in reasonable detail. *Langford v. Employees Ret. Sys.*, 73 S.W.3d 560, 565-66 (Tex. App.-Austin 2002, pet. denied) (due process concerns arose when agency failed to give applicant grounds on which it would rely for its decision and when agency denied application without deliberation).

The ED's Appealed Decision is wholly, and wrongly, based on factually unsupported *ipsi dixit.* The ED now ***uniformly*** claims, "HRSGs are not used wholly ***or partly*** to prevent, monitor, or control air, water or land pollution and, therefore, do not provide an environmental benefit," ED's 2012 Response, p. 10 (emphasis added), despite all the myriad calculations to the contrary, and his own 19 prior 100% Positive Use Determinations and Borger TRD. The ED bases his entire Appealed Decision on this touchstone presumption; because it is unsupported factually, and is actually contrary to the factual evidence which has been presented, the ED's Appealed Decision must be remanded.[12]

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[11] The question in this appeal is only whether, based on the record being appealed, the ED's Appealed Decision can be upheld; if not, it can only be remanded. 30 TAC §17.25(d)(2). This effectively places the burden of proof in this appeal on the ED and County. Also, because there is no equivalent of a judicial "reverse and render" with TCEQ, TCEQ cannot affirm the ED's Appealed Decision based on previously unstated grounds or "new" findings or evidence. Again, if the ED needs, as he does, to present a different, or even just a clearer and more supported Decision for the TCEQ to review, even he has no option except remand at this point. *Id.*

[12] The October 2, 2012, Brief on Behalf of the County ("P&A Brief"), filed by the County's appraiser, Charles Wayne Frazell (ostensibly of the appraisal firm Pritchard & Abbott ("P&A")), suffers from the same weaknesses. In the P&A Brief, Mr. Frazell provides no calculations or anything more than a cursory nod to TEX. TAX CODE § 11.31(k), before concluding:

> "I believe the majority of people would have voted "**NO**" on this proposition ["Proposition 2 creating the current environmental tax exemption," *see* P&A Brief, p. 3], if they thought it would include production equipment...." P&A Brief, pp. 4-5 (emphasis in original).
>
> "Since this type of boiler is a major component of production, it is not pollution control equipment." P&A Brief, pp. 4.

No evidence is presented of Mr. Frazell's education, professional qualifications or employment experience. There is no evidence to support any of his conclusions in the P&A Brief, or his qualifications to even state them. His

C. The ED's Appealed Decision is grossly inconsistent with past, controlling precedent.

The difference in the ED's Appealed decision and his 19 final Tier IV 100% Positive Use Determinations for HRSGs arose solely from certain affected Counties appeals of his 100% Positive Use Determinations. It is both unreasonable and arbitrary for substantive regulatory decisions to differ based solely, or even primarily, on after the fact challenges. Nevertheless, in rendering the Appealed Decision after the Counties' appeals, the ED ignored all 19 final Tier IV HRSG-related 100% Positive Use Determinations, as follows:

App. No.	Company/ Facility Name	County	Type of Equip	# of HRSGs at Facility	App. Date	TCEQ Deemed App. Admin. Complete	TCEQ Final Positive Use Determ'n Date	TCEQ Determination	Type of Supporting Calculation
12001	Bastrop Energy Partners LP	Bastrop	HRSG and Enhanced Steam Turbine	2	3/18/2008	4/8/2008	5/1/2008	100%+ HRSG (neg on steam turbine)	Compared with Simple Cycle with SCR
11970	Baytown Energy Center	Chambers	HRSG and Enhanced Steam Turbine	3	3/25/2008	4/8/2008	5/1/2008	100%+ HRSG; (neg on steam turbine)	Output-based Emissions
11965	Calpine Construction -Magic Valley	Hidalgo	HRSG and Enhanced Steam Turbine	2	3/25/2008	4/8/2008	5/1/2008	100%+ HRSG; (neg on steam turbine)	Output-based Emissions
12016	Channel Energy Center, LP	Harris	HRSG and Enhanced Steam Turbine	2	4/1/2008	4/8/2008	5/1/2008	100%+ HRSG; (neg on steam turbine)	Output-based Emissions

personal opinions and purported policy arguments against tax exemptions – wholly unsupported by any fundamental factual basis, research or anything other than his own speculation – are irrelevant and, without more, also incompetent as a legal matter. Whether HRSGs are "a major component of production" is not even the statutory or regulatory test at issue: the existence of pollution control functions and benefits are. *Regardless* of whether HRSGs are deemed involved in "production," or not, HRSGs still are conclusively recognized by both TCEQ and the Texas Legislature as having pollution control effects which entitle them to at least partial *ad valorem* tax exemptions. TCEQ should disregard Mr. Frazell's work product and alleged "briefing" to the contrary.

11968	Corpus Christi Cogeneration LP	Nueces	HRSG and Enhanced Steam Turbine	2	3/25/2008	4/14/2008	5/1/2008	100%+ HRSG; (neg on steam turbine)	Output-based Emissions
11967	Deer Park Energy Center Limited Partnership	Harris	HRSG and Enhanced Steam Turbine	4	3/25/2008	4/8/2008	5/1/2008	100%+ HRSG; (neg on steam turbine)	Output-based Emissions
11916	Florida Power and Light (FPLE Forney Power Plant)	Kaufman	HRSG and Enhanced Steam Turbine	6	3/13/2008	4/8/2008	5/1/2008	100%+ HRSG; (neg on steam turbine)	Output-based Emissions
12000	Frontera Generation	Hidalgo	HRSG and Enhanced Steam Turbine	2	3/18/2008	4/8/2008	5/1/2008	100%+ HRSG; (neg on steam turbine)	Compared with Simple Cycle with SCR
11964	Gentex Power Corporation	Bastrop	HRSG and Enhanced Steam Turbine	2	3/25/2008	4/8/2008	5/1/2008	100%+ HRSG; (neg on steam turbine)	Output-based Emissions
11972	GS Electric Generating Cooperative, Inc. (and Denver City Energy Assoc., LP)	Yoakum	HRSG and Enhanced Steam Turbine	2	3/27/2008	4/8/2008	5/1/2008	100%+ HRSG; (neg on steam turbine)	Output-based Emissions
11943	Guadalupe Power Partners LP	Guadalupe	HRSG and Enhanced Steam Turbine	4	3/12/2008	4/8/2008	5/1/2008	100%+ HRSG; (neg on steam turbine)	Compared with Simple Cycle with SCR
11917	Lamar Power Partners, LP	Lamar	HRSG and Enhanced Steam Turbine	4	3/13/2008	4/8/2008	5/1/2008	100%+ HRSG; (neg on steam turbine)	Output-based Emissions

11927	Navasota Odessa Energy Partners LP	Ector	HRSG and Enhanced Steam Turbine	2	4/22/2008	4/8/2008	5/1/2008	100%+ HRSG; (neg on steam turbine)	Output-based Emissions,
12005	NRG Texas Power - Wharton	Harris	HRSG	4	3/31/2008	4/8/2008	5/1/2008	100%+ HRSG; (neg on steam turbine)	Output-based Emissions
12003	NRG Texas-Cedar Bayou IV	Chambers	HRSG and Enhanced Steam Turbine	4	3/31/2008	4/8/2008	5/1/2008	100%+ HRSG; (neg on steam turbine)	Output-based Emissions
11942	Odessa-Ector Power Partners, LP	Ector	HRSG and Enhanced Steam Turbine	4	3/12/2008	4/8/2008	5/1/2008	100%+ HRSG; (neg on steam turbine)	Compared with Simple Cycle with SCR
12015	Pasadena Cogeneration	Harris	HRSG and Enhanced Steam Turbine	3	4/1/2008	4/8/2008	5/1/2008	100%+ HRSG; (neg on steam turbine)	Output-based Emissions
11921	Rio Nogales Power Project LP	Guadalupe	HRSG and Enhanced Steam Turbine	3	3/10/2008	4/8/2008	5/1/2008	100%+ HRSG; (neg on steam turbine)	Compared with Simple Cycle with SCR
11915	Tenaska Frontier Partners, Ltd	Grimes	HRSG and Enhanced Steam Turbine	3	3/7/2008	4/8/2008	5/1/2008	100%+ HRSG; (neg on steam turbine)	Compared with Simple Cycle with SCR

See Gueringer Aff., ¶3, Exs. 1-19.[13]

Treating similar properties disparately is the very definition of arbitrary and capricious action. *See, e.g., Contractors Transp. Corp. v. U.S.*, 537 F.2d 1160, 1162 (4th Cir. 1976);

[13] P&A's reliance on the September 28, 2005, XTO Energy claim (Use Determination 04-8353) is plainly misplaced. P&A Brief, p. 3. That claim was decided approximately *two years before* the 2007 amendments which added Subsections (k)-(m) to Section 11.31 of the Texas Tax Code and resulted in the creation of the ECL/ERL and the Application itself. Also, the XTO Energy claim was not a "HRSG" claim.

Brennan v. Gilles & Cotting, Inc., 504 F.2d 1255, 1264-65 (4th Cir. 1974). Although an agency is not bound to follow its decisions in prior cases in the same way that a court is, any alteration of an agency's prior interpretation must be accompanied by a timely and rational explanation. *Flores v. Employees Ret. Sys.*, 74 S.W.3d 532, 538-545 (Tex. App.-Austin 2002, pet. denied) (agency acted arbitrarily and capriciously by failing to give prehearing notice of intention not to follow previous decisions). Sudden and unexplained change is arbitrary, capricious and an abuse of discretion. *Smiley v. Citibank (S.D.), N.A.*, 517 U.S. 735, 742 (1996). Such is the case here, where there is no factual explanation for the Executive Director's action in treating similar properties in completely different ways.

The ED's actions are so arbitrary and capricious that they violate both the Tax Code and the State Constitution. *See* TEX. TAX CODE § 11.31(g)(2) (requiring pollution control determinations to be equal and uniform); TEX. CONST. art. VIII, § 1(a) (requiring taxation to be equal and uniform). Like Texas,' the United States Constitution itself prohibits arbitrary legal distinctions (and related discrimination) by government when regulating similarly-situated people or entities. *See, e.g., Reynolds v. Sims*, 377 U.S. 533, 565 (1964).[14] Yet, this is precisely what the ED did when ignoring his own twenty (20) prior, and final, 100% Positive Use Determinations specifically filed under Tier IV.[15] Without an articulated and sufficient justification, an agency acts arbitrarily any time it treats similarly situated applicants differently. *BMW of N. Am. v. Motor Vehicle Ed*, 115 S. W.3d 722, 726 (Tex. App.-Austin 2003, pet. denied). Also, an agency action that is flatly inconsistent with other decisions of the same agency will be set aside. *Id.*; *see also Occidental Permian Ltd. v. R.R. Comm 'n*, 47 S.W.3d 801, 810-12 (Tex. App.-Austin 2001, no pet.).[16] Based on the foregoing, the ED's change of position

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[14] These principles do not (as the ED seems to imply, but never quite says, *see, e.g.,* ED's 2012 Response, p. 7), "trump" the requirements of TEX. TAX CODE § 11.31(d) and 30 TAC 17.17(d) requiring the ED's individual consideration of each Application and allowing for "custom" calculations of use percentages. *See, e.g.,* ED's 2012 Response, p. 4. Most certainly, they do not justify, much less require, the ED's single, uniform Negative Use Determination for all HRSGs, *regardless* of circumstances.

[15] The ED's answer is to claim, "We weren't discriminating: we were just wrong." *See, e.g.,* ED 2012 Response, p. 14-15. However, attempting to change things simply by issuing a new decree at odds with the facts is the very essence of illegal discrimination, **Again, at the very least, remand for a new technical review is required before the ED can actually implement any change from his Original Decision.**

[16] The ED responds that these precedents and cases should not control TCEQ's disposition of this case, essentially because he has a right to change his mind. ED's 2012 Response, p. 15. *See,* however, Section II., *infra.* As tellingly, he states:

> The initial 25 positive use determinations were issued in error.... ***[T]here was no basis for the 100% positive use determination.***
>
> ED's 2012 Response, p. 15 (emphasis added).

If, indeed, a lack of factual basis *was* the reason the ED reversed himself (which Borger explicitly denies, *see* above), the same reasoning should apply here, and TCEQ should, at least, remand the Application for a new technical review and some legitimate, factual basis for a decision thereon. *See* Section I.A. and B., *supra.* The ED's reasoning here provides no foundation for the affirmance of the ED's Appealed Decision itself. In fact, as discussed in the Borger TRD and Johnson Aff., ¶¶9-10, there actually is more than sufficient factual basis to support a 100% Positive Use Determination for Borger's HRSGs.

with utterly no backup, support or calculated justification is patently "arbitrary and capricious."[17] Such arbitrary actions of the ED simply cannot stand. *Lewis v. Metro Sav. & Loan Ass'n*, 550 S.W.2d 11, 16 (Tex. 1977).[18]

II. THE EXECUTIVE DIRECTOR'S APPEALED DECISION EFFECTIVELY, AND IMPERMISSIBLY, REWRITES BOTH TEXAS LAW AND TCEQ REGULATIONS WITHOUT AUTHORITY.

A. The 2008 Amendments of 30 TAC §17 control this case.

Section 11.31 of the Texas Tax Code, specifically subsections (k)-(m), and the version of 30 TAC §17 effective in the latter part of February, 2008, clearly govern this case, which must be resolved as a "Tier IV" case thereunder. Borger's appeal herein was filed on March 27, 2008. *See* Johnson Aff., Ex. 10. Borger's Application was deemed administratively complete, and Borger's rights vested thereunder, on April 8, 2008. *See* Johnson Aff., Ex. 4. The Texas Court of Appeals for the Third District (the same Court that would hear this appeal) has just recently reconfirmed that "retroactive application of a law is unconstitutional... when it destroys or impairs vested rights." *Mont Belvieu Caverns, LLC, v. Texas Commission on Environmental Quality, et al.*, No. 03-11-00442 CV, __ S.W.3d__, 2012 WL 315576 at 13 (Tex. App – Austin 2012, no pet.) ("*Mont Belvieu*") In this case, applying any post-April, 2008 version of governing statutes, rules or regulations would effectively deprive Borger of its vested, Tier IV rights, as TCEQ purported to abolish Tier IV in 2010. Thus, while there have been several regulatory amendments since the Application was accepted by the ED as complete (and, in fact, all were also enacted after the ED's Original Decision), the laws applicable to April, 2008, must be applied to the Application.

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[17] TCEQ's PIC's argument that TCEQ need not consider the "arbitrary and capricious" legal standard in reviewing this appeal, PIC 2012 Response, p. 13, is specious. Even the PIC candidly notes, "...any appeal arising from the Commission's final action may be evaluated by reviewing courts as to whether the decision is arbitrary and capricious." *Id.* It makes no sense for TCEQ to review this appeal using any standard *other* than what a reviewing court would apply to TCEQ's own decision herein.

[18] The ED's citation of *First American Title Insurance Co. v. Strayhorn*, 169 S.W.3d 298, 306 (Tex.App.-Austin 2005), *aff'd on other grounds sub nom First Am. Title Ins. Co. v. Combs*, 258 S.W.3d 627 (Tex. 2008) ("*Strayhorn*"), *see* ED's 2012 Response, p. 15, actually supports Borger's position. As even the ED notes, *id.(sic)*, the Third Court only sustained the Comptroller's tax scheme *because it did not contravene the statute or any formally promulgated rule. See Strayhorn*, 169 S.W.3d at 306, *citing Tarrant Appraisal District v. Moore*, 845 S.W.2d 820, 823 (Tex. 1993). Such is clearly not the case here, as the ED's Appealed Decision directly violates numerous statutes and rules. *See, e.g.*, Sections II. B. and C., below.

For the same reason, *Grocers Supply Co. v. Sharp*, 978 S.W.2d 638, 640 (Tex. App.-Austin 1998, pet. denied), also relied on by the ED *(see* ED's 2012 Response, p. 15), also supports Borger's position. The Court merely held there that the Comptroller could change his mind regarding his *interpretation* of rules, but could not change the actual rules themselves. *See Grocers Supply Co. v. Sharp*, 978 S.W.2d at 642 ("What is at issue in this case, then, is the Comptroller's substitution of one *interpretation* of his rule for another, not the Comptroller's contravention of one of his rules promulgated under the notice-and-comment procedures of the Administrative Procedures Act.") This case involves the exact opposite situation: the ED is rewriting (and so, violating) rules and statutes by his "blanket" Appealed Decision.

While the sovereign clearly can change its mind by way of Constitutional or statutory revision, the prohibition against *ex post facto* laws limits that ability to changes that do not nullify previously vested rights (in this case, rights that were timely claimed AND should have been determined by laws and regulations in place long before the 2010 amendments to 30 TAC §17[19]). *See* TEX. CONST. art. I, § 16 ("No bill of attainder, *ex post facto* law, retroactive law, or any law impairing the obligation of contracts, shall be made."); *Mont Belvieu, id.*, and authorities cited therein. Post-2008 amendments of statutes, rules and regulations were not and could not be effective to retroactively divest rights which, prior to those amendments: Borger claimed; the ED granted; and which were then appealed - all under Tier IV.[20]

TCEQ's own Public Interest Counsel agrees that laws and regulations governing this case must be those in effect at the time the Application was received by the ED as administratively complete in April, 2008:

> Because Brazos' [*sic* - Borger's] applications were deemed administratively complete on April 8, 2008, after the February 7, 2008, effective date of the Chapter 17 amendments, the current Chapter 17 rules [those in effect as of April 8, 2008], apply to these Applications.
>
> *See* Johnson Aff., Ex. "5," PIC Response, pp. 2-3.
>
> Appellant submitted its application for a Tier IV use determination on March 25, 2008, so the 2010 amendments to Chapter 17 do not apply to this application.... Remanding the matter under a rule that was not in effect when the Appellant submitted its application-and has no basis in the governing statute-would be improper.
>
> * * *
>
> OPIC finds that the rules and statutes in effect when the Appellant submitted its application should be applied....
>
> Appellant submitted its application in April of 2008, therefore HB 3206 and HB 3544 as well as the 2010 amendments to Chapter 17 abolishing Tier IV would not apply to this application. If appeal of the 2012 negative use determinations is granted and this matter is remanded to the ED for a new use determination, the ED should process this application as a Tier IV application.
>
> PIC 2012 Response, pp. 8, 10-11.
>
> The ED agrees as well:

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[19] It is not clear why TCEQ did not remand the Application or rule on it at all from December of 2008 until June of 2012, but whatever the reason, it was under TCEQ's exclusive control. Appellees should not be heard to claim that this administrative delay gives them the right to have new laws applied to this case now that did not even exist in 2008 when the Application was filed and the ED originally ruled.

[20] Notably, *none* of the interested parties have asserted this case is *not* subject to Tier IV principles.

HB 3206 and 3544 [the Bills enacting 30 Tax Code §§11.31 (g-1 and (n)][21] do not apply to applications filed prior to January 1, 2009, or to applications filed after January 1, 2009, that received final determinations prior to September 1, 2009.

ED 2012 Response, p. 3, *citing* HB 3206 § 5 and HB 3544 § 5. There seems to be no dispute about the fact that Borger's Application is to be judged according to the law in effect as of April, 2008. *See* ED's 2012 Response, p. 4-5. However, the ED's 2012 Response frequently fails to distinguish explicitly between the law controlling the ED's rulings on his "Group 1" Tier IV Applications and later-amended laws and regulations allegedly controlling his "Group II" Tier III Applications.[22] Therefore, to be very clear, political subdivisions or agencies of the sovereign (like the ED) are *not* entitled to change *their* minds about anything in disregard of statutes the sovereign itself enacted to govern their decisions and actions. *See, e.g., Public Util. Comm'n v. Gulf States Utils. Co.*, 809 S.W.2d 201, 207 (Tex. 1991) (agencies can only act in accord with the statutes which govern them). This, unfortunately, is precisely what the ED has impermissibly done in his Appealed Decision.

B. The ED's current, uniform, "absolutely-no-exemption-allowed" decision ignores the Texas Tax Code and related, consistent regulations.

> Subsection (a) of [Texas Tax Code] section 11.31 states that **"[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). A "facility, device, or method for the control of air, water, or land pollution," is defined in subsection (b) of section 11.31 as:
>
> > land that is acquired after January 1, 1994, or 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.
>
> *Id.* § 11.31(b).

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[21] The ED notes these amendments were the basis of his 2010 elimination of Tier IV Applications, among other things. *See* ED's 2012 Response, p. 3.

[22] For example, the ED relies heavily on 2009's HB 3206 and 3544 and their addition of TEX. TAX CODE §11.31(g-1)'s uniformity requirement. *See, e.g.,* ED's 2012 Response, p. 3. Also, the ED still maintains he can change his mind relative to the Application and effectively eliminate HRSGs from TEX. TAX CODE ANN. § 11.31(k)(8) and the related Figure: 30 TAC §17.14(a). *See* ED's 2012 Response, pp. 15-16. While this latter claim is addressed more specifically in Section II. B. and C., below, the authorities in this Section also apply to prevent the ED from "changing his mind" and revising his rules and regulations in any way that would impair Borger's vested rights under the Application.

See Mont Belvieu, 2012 WL 315576 at 4 [emphasis added]. In 2007, the Texas Legislature expressly amended Section 11.31 of the Tax Code to add Subsections (k), (l) and (m), *inter alia,* to recognize previously unrecognized pollution control functions and benefits of various, specific equipment. The Texas Legislature literally *mandated* that TCEQ:

> ***shall*** adopt rules establishing a nonexclusive list of facilities, devices, or methods for the control of air, water or land pollution, which ***must*** include: ... (8) heat recovery steam generators.

TEX. TAX CODE ANN. § 11.31(k). ("Subsection (k)", emphasis added.)

The Legislature was equally adamant that items may be "removed from the list only if the Commission ***finds compelling evidence*** to support the conclusion that the item... ***does not*** render pollution control benefits." TEX. TAX CODE §11.31(l). In response, TCEQ adopted an Equipment and Categories List ("ECL"), which included HRSGs. *See* 30 TAC §17.14(a) and Figure: 30 TAC §17.14, #B-8. TCEQ also expressly adopted TEX. TAX CODE §11.31(l) as part of its own regulations. *See* 30 TAC §17.14(b)(2). Thereafter, although required to revisit the ECL at least once every three years, *see* TEX. TAX CODE §11.31(l); 30 TAC §17.14(b), to this very day, TCEQ has ***never*** removed HRSGs from its ECL or its successor, the Expedited Review List ("ERL"). *See* Figure: 30 TAC §17.14(a) (versions *eff.* 2008 and 2010).[23]

HRSGs are eligible for positive use determinations because they have been expressly defined by statute and regulation as pollution control equipment.[24] TCEQ has never found compelling evidence that HRSGs do *not* render pollution control benefits.[25] *Id.* Since the ED's Appealed Decision, on its face, is in direct conflict with the ECL, ERL and Subsection (k), the ED's Appealed Decision must be remanded for reconsideration in light of those governing laws. The Tax Code completely undercuts the idea that the ED's 100% negative use determination is even legally possible for a HRSG:

> Notwithstanding the other provisions of this section, **if the facility, device or method for the control of air, water, or land pollution described in an application for an exemption under this section is a facility, device, or method included on the list adopted under Subsection (k)**, the executive director... ***shall determine that the... facility, device, or method described in the application IS used WHOLLY OR PARTLY as a facility, device or method for the control of air, water, or land pollution*** ....

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[23] For definitional purposes only, Appellant notes that HRSGs are actually described by TCEQ itself in its ERL at #B-8 as "[a] counter-flow heat exchanger consisting of a series of super-heater, boiler (or evaporator) and economizer tube sections, arranged from the gas inlet to the gas outlet to maximize heat recovery from the gas turbine exhaust gas."

[24] This is completely appropriate. *See, e.g.,* Johnson *Aff.*, ¶¶8-10.

[25] Significantly, TCEQ did not remove HRSGs from the ECL/ERL despite having *had* to reconsider the question, at least, in 2010, well after the County's appeal of the ED's Original Decision had been perfected and was awaiting decision by TCEQ.

TEX. TAX CODE §11.31(m) ("Subsection (m)," emphasis added).[26]

Neither TCEQ nor the ED has any power inconsistent with that delegated to them by the Legislature. *Public Util. Comm 'n v. City Pub. Serv. Bd.*, 53 S.W.3d 310, 312 (Tex. 2001); *Tennessee Gas Pipeline Co. v. Rylander*, 80 S.W.3d 200, 203 (Tex. App.-Austin 2002, pet. denied). To understand their relevant power here, one need only look to TEX. TAX CODE §11.31. In so doing, the primary objective must be to give effect to the Legislature's intent. *State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006). The Court should give effect to the Legislature's intent "first and foremost" via the statutory text. *Lexington Ins. Co. v. Strayhorn*, 209 S.W.3d 83, 85 (Tex. 2006). The Court can rely on the plain meaning of the text, unless a different meaning is supplied by legislative definition or is apparent from context, or unless a plain meaning leads to absurd or unreasonable results. *City of Rockwall v. Hughes*, 246 S.W.3d 621, 625-26 (Tex. 2008); *see also* TEX. GOV'T CODE § 311.011 ("Words and phrases shall be read in context and construed according to the rules of grammar and common usage," but "[w]ords and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly."). **These principles take precedence over the general rule that tax exemptions are strictly construed. *Sharp v. Tyler Pipe Indus., Inc.*, 919 S.W.2d 157, 161 (Tex. App.—Austin 1996, writ denied).**[27]

Since the subject statutory and regulatory texts are not ambiguous, it is not even appropriate to resort to rules of construction or extrinsic aids: "Where text is clear, text is determinative of that [legislative] intent." *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009) (*citing In re Estate of Nash*, 220 S.W.3d 914, 917 (Tex. 2007); *Shumake*, 199 S.W.3d at 284; and *Alex Sheshunoff Mgmt. Servs. v. Johnson*, 209 S.W.3d 644, 651–52 (Tex. 2006)). Also, it is presumed that: 1) the Legislature knew background law and acted with reference to it, *see Acker v. Texas Water Comm'n*, 790 S.W.2d 299, 301 (Tex. 1990); 2) the Legislature selected statutory words, phrases, and expressions deliberately and purposefully, *see Texas Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628, 635 (Tex. 2010); *Shook v. Walden*, 304 S.W.3d 910, 917 (Tex. App.-Austin 2010, no pet.); and that 3) "the entire statute is intended to be effective" and "a just and reasonable result is intended" TEX. GOV'T CODE § 311.021(2), (3).

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[26] Appellees' misguided focus is on the *primary economic motivation of the HRSGs' owners*, not on the actual function and pollution control benefits of the *HRSGs themselves*. P&A/the County actually compound this error by focusing on whole ***plant*** economics, not the pollution control effects of HRSGs themselves. *See, e.g.*, P&A Brief, p. 4 ("The primary reason for building combined-cycle and cogeneration plants is economics and not pollution control."). This reasoning, carried to its logical conclusion, would eliminate pollution control exemptions for any pollution control devices employed in facilities such as refineries and chemical plants built for any economic gain.

[27] The doctrine of legislative acceptance, see ED's 2012 Response, p. 7, actually supports the ED's Original Decision, too. Before July, 2012, the ED never claimed HRSGs could never be eligible for any positive use determination. Every rule, regulation and decision applied or made by the ED prior to or essentially contemporaneously with the ED's Original Decision actually affirmed not just that HRSGs are entitled to *ad valorem* exemptions as pollution control equipment, but that they could qualify for 100% Positive Use Determinations. If legislative acceptance applies here (certainly, no controlling statute invalidated the ED's Original Decision), it applies in favor of awarding HRSGs 100% Positive Use Determinations. Given the plain, crystalline clarity of the statutes and regulations cited above, however, this is a collateral point. There is no statutory or regulatory ambiguity, nor does the ED assert any such ambiguity exists. Consequently, principles of interpretation are generally inapplicable to this case. All Borger asks is that TCEQ enforce controlling statutes and its own applicable regulations as written.

"An administrative agency is said to act arbitrarily or capriciously where, among other things, it fails to consider a factor the Legislature has directed it to consider...." *City of Waco v. Texas Comm'n on Envtl. Quality*, 346 S.W.3d 781, 819 (Tex. App.-Austin 2011, pet. denied) (*citing City of El Paso v. Public Util. Comm'n*, 883 S.W.2d 179, 184 (Tex. 1994)). Under Subsection (m), *any* equipment listed in Subsection (k) is necessarily entitled to ***some*** pollution control exemption. Consequently, it is simply not possible for the ED to render a 100% negative use determination for Blackhawk's HRSGs, and the ED's Appealed Decision is therefore arbitrary and capricious and must be remanded for findings consistent with Subsections (k) and (m). *See, e.g., Rodriguez v. Service Lloyds Ins. Co.*, 997 S.W.2d 248, 254–55 (Tex. 1999) ("If the Commission does not follow the clear, unambiguous language of its own regulation, we reverse its action as arbitrary and capricious.").[28] Moreover, administrative rules also are interpreted like statutes because they have the force and effect of statutes. *Rodriguez*, 997 S.W.2d at 254.

Thus, it should be no surprise that, in *Mont Belvieu,* the Third Court of Appeals effectively recognized that "variable," *see* Figure: 30 TAC §17.14(a), Part B, like the "wholly or partly" language in TEX. TAX CODE §11.31, mean that HRSGs' involvement in "production," if any, does ***not*** negate their entitlement to a Positive Use Determination and *ad valorem* tax exemption based on its pollution control function.[29] *Mont Belvieu* merely recognized that the proportion of a property's value attributable to a pollution-control feature or function must be distinguished from that attributable to its capacity to produce goods and services, if any. *See Mont Belvieu*, 2012 WL 315576 at 12, *citing* 30 TAC §11.31(c)(3). Clearly, the ED's Appealed Decision cannot stand in light of governing statutory and regulatory requirements.

The ED repeatedly claims that "Just because a piece of equipment is listed in §11.31(k) does not mean that it is automatically entitled to a positive use determination." *See, e.g.,* ED 2012 Response, p. 3 and §III. A. Borger respectfully disagrees, and notes the following language from the ED's 2012 Response, along with TEXAS TAX CODE §11.31(m) itself, plainly belie the ED's position:

> Section 11.31(m) requires the Executive Director to distinguish the production portion of the §11.31(k)-listed equipment from the pollution control portion. The Executive Director must determine the appropriate use determination percentage...

That is as far as Texas Tax Code Section 11.31(m) goes.[30] The ED, however, engrafts an additional condition not stated in the statute (and which is contrary to it for the reasons set out

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[28] Neither the ED nor the TCEQ itself would be entitled to any deference from the Courts of this State if ruling otherwise, because the subject statute and implementing regulations are not ambiguous. *Railroad Comm'n v. Texas Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 624–25 (Tex. 2011); *City of Waco*, 346 S.W.3d at 800 (*citing Texas Citizens*, 336 S.W.3d at 625).

[29] The ED persistently reads the "or partly" out of the Constitutional and legislative mandates. *See, e.g.,* ED's 2012 Response, p. 6.

[30] Texas Attorney General Opinion JC-0372 (2001) agrees that equipment can be involved in production yet still be entitled to a Positive Use Determination for pollution reduction:

> Section 11.31 is broadly written, and we believe its plain meaning is clear. It embraces any property, real or personal, "that is used wholly or partly as a facility, device, or method for the control of air, water or land pollution .... " (emphasis added)."

above): "...which includes 0% if none of the equipment is used for pollution control." *See* ED's 2012 Response, p. 6. He purportedly relies on 33 Tex. Reg. 932 at 933 (February 1, 2008) repealed by 35 Tex. Reg. 10964 (November 18, 2010) and TCEQ's Figure: 30 TAC §17.14(a)[31] in asserting it. Again, however, based on the authorities cited above, no rule, regulation, proclamation or other action of an agency can contradict or alter the statute giving rise to it. *See, e.g., Public Util. Comm 'n v. City Pub. Serv. Bd.*, 53 S.W.3d at 312; *Tennessee Gas Pipeline Co. v. Rylander,* 80 S.W.3d at 203. Consequently, the ED's (and TCEQ's) attempts to engraft any additional condition upon the unconditional mandate of Subsection (m) – especially ones which purport to effectively nullify it – are simply ineffective and void, and the ED's Appealed Decision must be remanded.[32]

C. The ED also failed to follow essential rule-making requirements of the Texas Administrative Procedure Act.

The ED's new, apparently universal, determination that HRSGs are not eligible for any, *even potential*, Positive Use Determination also ignores and violates formal rulemaking procedures under the Texas Administrative Procedure Act ("APA"). The ED's Appealed Decision clearly manifests a rule change by effectively eliminating HRSGs from Figure: 30 TAC §17.14(a), Part B: a "rule" is any "state agency statement of general applicability that ... implements, interprets, or prescribes law or policy," including "the amendment or repeal of a prior rule." TEX. GOV'T CODE § 2001.003(6). A state agency can only promulgate new rules through formal rulemaking procedures, including prior notice of a proposed new rule and an opportunity for public comment, legislative review, and a formal order adopting it. TEX. GOV'T CODE §§2001.23; 2001.029; 2001.032-.033. The APA also requires the advance notice to contain enough information to allow interested persons to determine if they need to participate to

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Next, we consider whether section 11.31 excludes from its scope pollution-reducing production equipment. Significantly, the statute applies to property used "wholly or partly" for pollution control. See *id.* § 11.31(a). To qualify for the exemption, property must be used "wholly or partly" to meet or exceed environmental rules. *See id.* § 11.31 (b). The term "wholly" clearly refers to property that is used only for pollution control, such as an add-on device. *See Merriam Webster's Collegiate Dictionary* 1351 (10th ed. 1993) (defining "wholly" to mean "to the full or entire extent: ... to the exclusion of other things"). The term "partly," however, embraces property that has only some pollution-control use. *See id.* at 848 (defining "partly" to mean "in some measure or degree"). This broad formulation clearly embraces more than just add-on devices. Furthermore, that statute clearly embraces not only "facilities" and "devices" but also "methods" that prevent, monitor, control, or reduce pollution. "Methods" is an extremely broad term that clearly embraces means of production designed, at least in part, to reduce pollution. *See id.* at 732 (defining "method" to include "a way, technique, or process of or for doing something').

The ED does not disagree, citing Attorney General Opinion JC-0372, pg. 6, himself when noting that pollution-reducing production equipment may receive a partial tax exemption. *See* ED 2012 Response, p. 9, ftnt. 35.

[31] Among other things, Figure: 30 TAC §17.14(a), in the introductory narrative of Table B, does state, "Property used ***solely*** for product collection or for production purposes is not eligible for a positive use determination." (Emphasis added.)

[32] This argument, to some extent, begs the question of the ED's factual basis for his Appealed Decision. The fact is, the ED cannot point to any test, calculation or factual measurement that supports his Negative Use Determination. Without such a factual basis, the ED's Appealed Decision cannot stand, regardless of Subsections (k) and (m) and other laws cited in this Section II.

protect their own rights. *Tex. Workers' Comp. Comm 'n v. Patient Advocates*, 136 S.W.3d 643, 650 (Tex. 2004).

Chapter 17 of the Texas Administrative Code was created to establish how any owner of pollution control property could get a use determination. 30 TAC §17.1. Because the universal decree of the ED's Appealed Decision ostensibly implements law or describes procedure, its new proclamation is one of general applicability, and changes in relevant rules governing the process can only be made through the formal notice and comment process discussed above.[33] *See, e.g., El Paso Hospital District v. Texas Health and Human Commission, et al.*, 247 S.W.3d 247, 714 (Tex. 2008).[34] To remove HRSGs from the 30 TAC §17.14(a) ECL/ERL, then, the ED would need to implement future rulemaking procedures pursuant to 30 TAC §17.14(b) and the Texas Government Code sections cited above, too..[35]

Instead, the ED has simply chosen to make an unsupported, but nonetheless "blanket," decree, "Heat recovery steam generators are used solely for production and, therefore, are not eligible for positive use determination." This proclamation circumvented required rulemaking procedures, as well as Subsections (k) and (m). Clearly, the ED's Appealed Decision, applied as it patently is across the board to all pending HRSG Applications, and all HRSGs generally, reads HRSGs right off of the ECL/ERL and out of the implementing statutes, Subsections (k) and (m), without regard to the specific use or effects of any actual HRSG itself. The ED's Appealed Decision thus implements an impermissible new, universal rule applicable to all HRSGs, which the Legislature never foresaw, intended or authorized, and it cannot stand.[36] Because the ED's

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[33] The ED's reliance (ED's 2012 Response, p. 16) on *Texas Mutual Insurance Co., v. Vista Community Medical Center, LLP.*, 275 S.W.3d 538, 555 (Tex. App.-Austin 2008, no pet.) is also misplaced on its face. The ED admits the Court distinguished that case from *El Paso Hospital, supra,* specifically on the basis that "the ...[*Texas Mutual*] report does not contradict Rule 134.401." *See Texas Mutual Insurance Co.*, 275 S.W.3d at 556. Here, the ED's Appealed Decision clearly contravenes ***both*** a rule (30 TAC §17.14(a) and its accompanying Figure) and Subdivisions (k) and (m), and it also operates as a rule of general applicability to all HRSGs.

The ED's reliance on *Railroad Commission of Texas v. WBD Oil & Gas Co.*, 104 S.W.3d 69, 79 (Tex. 2003) (ED's 2012 Response, p. 17) is equally off base. The *Railroad Commission* Court only held, as the ED admits, that orders detailing regulations for a certain, ***specific*** field are not APA "rules." In the instant case, the ED obviously intended and *preferred* a rule of "general applicability." His statement to the contrary ("This change is not a rule of general applicability," *id.*) is just another unsubstantiated conclusion that flies in the face of the actual facts.

[34] Without actually saying so, the ED suggests that the ED's Appealed Decision is not a rule change but only "a new formula resulting in the negative use determinations." ED's 2012 Response, p. 16. This actually highlights the nature of the ED's decree in his Appealed Decision as a rule change, because no formula is even proposed to support it.

[35] For reasons previously stated, of course, 30 TAC §17.14(b) could never be amended to remove HRSGs specifically from the ECL/ERL without a prior amendment of TEX. TAX CODE §11.31(k)(8) in the first place.

[36] Even the County's appraiser, Pritchard & Abbott ("P&A"), expressly disagrees with the ED's blanket assertion:

> A HRSG is often added to recover exhaust gases to preheat water entering the boiler of a conventional electric generating plant to improve efficiency.... If a HRSG is **added** just to improve efficiency, the HRSG may qualify for an exemption.... Ducting the hot gases from the [combustion turbines'] jet engine(s) reduces the pollution by reducing the need for an additional heat source (burners)." P&A's October 2, 2012, Brief on behalf of the County ("P&A Brief"), p. 2 (emphasis in original).

effective removal of HRSGs from the ECL/ERL was not in the form of a properly promulgated rule under the APA, TCEQ should remand the ED's Appealed Decision.

III. THE EXECUTIVE DIRECTOR'S APPEALED DECISION IGNORES ALL CREDIBLE "TIER IV" CALCULATIONS OF HRSGS' POLLUTION CONTROL BENEFITS.

As discussed in Section II., *supra*, the ED's assertion that "Heat recovery steam generators are used solely for production...." is in direct conflict with the Legislative mandates and findings of Subsections (k) and (m) and the ECL/ERL, Item B-8. The question for HRSGs is not *whether* they are entitled to a Positive Use Determination, but *how much* of a Positive Use Determination they are, in fact, entitled to receive. TEX. TAX CODE §11.31(m). Even the ECL/ERL itself associates Item B-8, Heat Recovery Steam Generators, with a "V," or variable, percentage, meaning that:

> The pollution control percentage for this equipment is listed as a "V," for variable, and ***must be calculated on an application specific basis***.
>
> *See* Figure: 30 TAC §17.14(a), Part B, introductory narrative (emphasis added).

Thus, ED's current, apparent rule that ***every*** HRSG Use Determination ***must*** (or even should or could be) a uniform, "zero" proposition now and forevermore is also manifestly against the above-stated requirements, and it wrongly ignores all the actual available, credible evidence. For example, the Johnson Aff. (¶¶8–10) presents several methodologies whereby a Positive Use Determination can be calculated for Blackhawk's HRSGs:

> METHODOLOGY ONE– Avoided NOx Emissions: *see* Johnson Aff. ¶8 (91.4% Positive Use Determination);
>
> METHODOLOGY TWO – Alternative Avoided NOx Emissions (Duff & Phelps): *see* Johnson Aff. ¶9 (100% Positive Use Determination);

The ED contends **no** HRSG is entitled to a 100% Positive Use Determination based on alleged "concessions" by "Applicants" that HRSGs are used for production purposes, so (the logic goes) they cannot be used wholly for pollution control purposes. *See* ED's 2012 Response, p. 9. Nothing in TEXAS TAX CODE §11.31 compels that conclusion or excludes the idea that equipment can simultaneously be used in "production," yet have pollution control benefits. The ED's Borger TRD; Methodology Two; and the fact that Borger's HRSGs save fossil fuel and reduce emissions by transferring energy into different forms (without actually producing anything "new"), all support the 100% Positive Use Determination originally awarded in the ED's Original Decision. Johnson Aff. ¶¶9-10. *See also:* Johnson Aff. Ex. "4", the ED's Borger TRD.[37]

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[37] Of course, other HRSG owner/appellants also have provided TCEQ and the ED with their own "custom" calculations of positive Partial Use Determinations they contend should be granted their particular HRSGs. But none of them are "zero," either.

All of the foregoing methodologies utilize different data, perspectives and reasoning to actually calculate potential pollution control Positive Use Determinations for Borger's HRSGs ranging from approximately 91.4% to 100%. The point of this section, however -- solely for the purposes of this appeal and securing remand of the ED's Appealed Decision, *see* ftnt. 8, *supra* -- is *not* to determine which calculation or calculations are objectively the "best," or most correct.[38] The point here is simply that the actual, credible evidence indicates, consistent with Figure: 30 TAC §17.14(a), above, that the ED's "zero" is not an option, and that remand, therefore, is required. *See* Johnson Aff. ¶11. There simply is ***no*** credible calculation that supports a "zero" Use Determination for all HRSGs everywhere and forevermore, as the ED maintains, so the Appealed Decision must be revisited.[39]

Further, even the ED acknowledges that each of his HRSG Use Determinations at least *should be* based on "a case-by-case review of each application." *See, e.g.,* ED's 2012 Response, p. 17.[40] He acknowledges the need for each Use Determination to have its own technical review. *See, e.g.,* ED's 2012 Response, p. 17. He even admits:

> As can be seen from reviewing the applications, appeals, and Executive Director's initial brief on the six appeals, there are many different ways to view the HRSG applications.
>
> ED's 2012 Response, p. 14-15.

Yet, the ED ignored all the above; made up a new universal rule; and arbitrarily and capriciously applied it across the board to all pending Tier IV and Tier III appeals. The ED made no effort to evaluate one claim apart from another, or to distinguish or even compare

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[38] That will be an issue which can only be determined on remand, so Borger expressly reserves that question for remand.

[39] P&A initially erroneously claimed on the County's behalf that its self-styled "Tier III" calculation actually supports a use determination for Borger's Tier IV Application of *less* than zero. *See* P&A's 12/16/08 Reply Brief for Hutchinson County, *et al.*, Appraisal Districts, Exs. 2-3. It appears from the face of the ED's Appealed Decision that the ED properly ignored P&A's original briefing. Among other problems, as described in ftnt. 12 above, it is not supported by qualified exert testimony. Nevertheless, and while there are many things wrong with P&A's approach, suffice it to say here that P&A only reached its conclusion (and *could* only have reached it) by mutilating the formula in 30 TAC §17.17(b) and admittedly substituting "Operating Cost Savings" for the "Byproduct" required in the formula. Whatever P&A's rationale for fundamentally changing the formula, "Operating Cost Savings" just are not and cannot be equated to any "Byproduct," specifically defined in 30 TAC §17.2(1) as:

> a chemical or material that would normally be considered a waste material requiring disposal or destruction, that due to pollution control property is now used as a raw material in a manufacturing process or as an end product. The pollution control property extracts, recovers, or processes the waste material so that it can be used in another manufacturing process or an end product.

Significantly, just eliminating the deduction of operating cost savings from P&A's calculation changes the partial use determination from a negative 91.77% to a *positive* 33.3% partial use exemption. Obviously, P&A's formula is outcome determinative, and its focus is not on the pollution control aspect of the property for which the exemption is claimed. It is unsurprising, then, that in its brief to the TCEQ in this appeal, P&A abandoned its earlier approach.

[40] *See also* ED's 2012 Response, p. 4:

> Tier IV applications allowed applicants to propose a reasonable method for calculating an appropriate use determination percentage, and required the ED to review the proposed calculation method and make a final determination. This resulted in widely varying calculated use determination percentages..

claims on any technical, legal or factual grounds, even to show why they should be treated the same. Clearly, what the ED did is not what he admits should have been done. It is highly unlikely that any "one size fits all" solution to the "HRSG issue" is even possible. *See, e.g.*, Johnson Aff., ¶¶ 7, 10-11. But certainly, the single "solution" the ED presently proclaims is not supported by the actual evidence, and this appeal must be remanded for his further consideration.

IV. THE EXECUTIVE DIRECTOR'S NEW, WHOLESALE REJECTION OF ALL SUPPORTING ENVIRONMENTAL LAWS IS WRONG, ARBITRARY AND CAPRICIOUS.

Over *four years* after the County perfected its appeal of the ED's Original Decision, and the ED's Response Brief was filed, in the ED's 2012 Response, §III. E., for the first time, the ED suddenly proclaimed a new, blanket rejection of *every single* environmental law cited and relied on by any Applicant (collectively, the "Cited Regulations"). Some of the rejected, Cited Regulations (like Borger's and the 19 final 100% Positive Use Determination recipients'), were *previously accepted by the ED* as "appropriate rules." *See, e.g.*, Johnson Aff., ¶4, Ex. 5.[41] The ED's only justification for this paradigm shift is a new, and completely undefined, "nexus" requirement he now unilaterally purports to engraft upon controlling statutes, regulations and rules. *Id.*, p. 11 ("A sufficient nexus must exist between the equipment and the environmental rule.").

Fundamentally, the ED cites no statute, regulation or case law that alludes to, much less actually requires, his mysterious, alleged "nexus." *Id.* There is not even a suggestion that any statute, regulation or case law provides any guidance as to what might be a "sufficient" nexus. Just as fundamentally, then, the ED's arguments on this topic fail for a number of reasons.

First, the ED's contention, made for the first time on appeal, clearly violates due process. *Langford v. Employees Ret. Sys.*, 73 S.W.3d at 565-66. Since the ED never expressly defines his "nexus," let alone what might make it "sufficient," his "nexus" is void for vagueness. Also, Borger was never given notice of this hypothesized "nexus" requirement or the necessity of having to address it in their Applications or otherwise. *See, e.g.*, Johnson Aff., ¶2 and Ex. 4. Had Borger's Application actually been deficient in its failure to properly cite "an applicable environmental regulation," *see* ED's 2012 Response, Topic III. E., p. 10, Borger would have been entitled to a Notice of Deficiency and an opportunity to supplement its allegedly "incomplete" Application. *See* 30 TAC §17.12(2)(A). This never occurred because the Application was not, and was never considered by anyone to be, deficient in any way. *See* Johnson Aff., ¶2, 3 and Ex. 4.[42]

Second, the ED's new, wholesale rejection of the Cited Regulations also runs afoul of equal protection principles and the requirements of uniformity, equality and fairness in approach. *See* TEX. TAX CODE § 11.31(g)(2); TEX. CONST. art. VIII, § 1(a); *Reynolds v. Sims*, 377 U.S. at

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[41] In Borger's TRD, *see* Johnson Aff., ¶2, Ex. 4, the ED specifically found 60 CFR 60.44Da was "an appropriate rule." Borger continues to maintain its Application was complete and appropriately supported.

[42] TCEQ should not miss the fact that, as late as July 9, 2012, the ED *still* agreed the Application was administratively complete, *in spite of the fact* that he also noted at that time that, "This rule does not require the installation of this equipment." *See* attached Ex. "C," the Borger ARD.

565. The ED has already granted 19 final 100% Positive Use Determinations based on Cited Regulations. Imposition of any new "nexus" requirement against Applicants/appellants now would be intrinsically discriminatory, and seemingly based on nothing more than Applicants' status as appellants herein.

Perhaps most instructively, the ED's new "nexus" requirement just is not a part of any governing statute or regulation. There simply is no statutory or regulatory requirement that the subject "rules or regulations" actually require installation of a HRSG or specify standards that could only be met by a HRSG, as the ED infers. *See* ED's 2012 Response, p. 11.[43]

The ED's attempt to engraft *any* "nexus" requirement into these controlling laws runs afoul of the very same principles and authorities cited in Section II. A. – C. which, for brevity, are simply reurged and incorporated herein for all purposes by reference.[44] Regardless, as a wholly new stated basis for the ED's Appealed Decision, his "nexus" contention can only be a basis for remand, not affirmance. *See* ftnts. 8-9, and related authorities cited *supra*. Since this issue compels a "no affirmance" result regardless of how TCEQ looks at it, the Application must be remanded.

V. CONCLUSIONS

The authorities and evidence cited in this Brief compel the conclusion that TCEQ simply must remand this case. There is no point in affirming a decision with so many associated, fatal problems, just so the Courts can fix them on appeal. The Commission should fix what it can now and force the ED to take a "fresh look" at all the particulars of this controversy in light of all the evidence presented.[45] The fact that the ED has gone from 100% Positive Use Determinations

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[43] The ED's contention that a "mere" emissions limit would necessarily "make the entire plant pollution control equipment," stretches argumentative hyperbole to the breaking point and ignores other legal requirements for pollution control exemptions. To illustrate, EPA has specifically cited the environmental benefits achieved from HRSGs associated with combined-cycle combustion turbines. According to EPA, the use of such a system "decreases NOx emissions by 14 percent over simple-cycle combustion turbines and 89 percent over existing coal electricity generation plants. In addition, CO_2 emissions will be 5 percent lower than emissions from SCCTs and 64 percent lower than existing coal plants." EPA, Economic Impact Analysis of the Stationary Combustion Turbines NSPS: Final Report, Feb. 2006, pp. 2-3, 2-4. However, HRSGs are the mechanisms or devices that distinguish a combined-cycle combustion turbine system from a simple, single cycle system. Without HRSGs, Blackhawk would be a single-cycle combustion turbine system; more energy would be needed to produce the same amount of electricity; and, as EPA has noted, more emissions would result. HRSGs are, therefore, the device to which the air emission reductions are and should be attributed.

[44] In the alternative, however, a "nexus" is simply "a connection or link between things." *See, e.g.,* http://dictionary.findlaw.com/definition/nexus.html. If required – which Borger continues to deny – specific references to HRSGs (as in 40 CFR §Da(e), and in the definition of "combined cycle gas turbine" in incorporated subpart 40 CFR Subpart GG ("any stationary gas turbine *which recovers heat from the gas turbine exhaust gases to heat water or generate steam*") provide a more than sufficient connection between those environmental regulations and HRSGs. Also, Subpart Da regulates each electric utility steam generating unit. *See* 40 CFR § 60.40Da(a). An electric utility combined cycle gas turbine is part of such a unit. *See* 40 CFR § 60.41Da. Since a HRSG is part of the combined cycle gas turbine system regulated by Subparts Da/GG, *see* 40 CFR § 60.40Da(a)(4), there is a connection between HRSGs and 60 CFR 60.44Da.

[45] Borger is well aware this controversy has been pending for more than four years now. All parties would doubtless appreciate an expeditious conclusion. However, the desire for expediency must take a back seat to the

to 0% (or 100% Negative Use Determinations) uniformly, without sufficient factual explanation and with flawed legal reasoning, is *prima facie* proof of the need for remand.[46] The ED has no cognizable evidence that the subject HRSGs are not entitled to some *ad valorem* tax exemption under Subsections (k) and (m).

Whatever Use Determination ultimately is given Borger's HRSGs, it is abundantly clear that the ED's Appealed Decision of "zero" cannot be it. The ED's Appealed Decision is wholly conclusory and unsupported by any of the analyses and calculations required by the Texas Administrative Code. It contravenes – and even worse, impermissibly rewrites -- controlling laws and regulations (including TCEQ's own mandates). It completely ignores numerous prior inconsistent decisions concerning similarly-situated parties and HRSGs. The ED's Appealed Decision itself is impermissibly "outcome determinative and not focused on the pollution control aspects of the property."

Borger's evidence and authorities cited, like its Application itself, establish that its HRSGs are, in fact, entitled to at least some exemption from *ad valorem* taxes. As discussed herein, Borger is entitled to a Positive Use Determination from the ED based on the unique specifics of its own HRSGs and their operation and effects.

Appellees seem inordinately focused on securing a result that clearly was never intended by the Legislature or TCEQ: a "one-size-fits-all" standard use determination for all HRSGs to apply now and in the future. While such might be attractive from a strictly utilitarian point of view, it obviously is not what the Legislature or TCEQ itself contemplated. Governing statutes and regulations discussed above establish that both the Legislature and TCEQ recognized one practical fact: *ad valorem* tax exemptions to which HRSGs are entitled must be determined based on the specifics of each facility's configuration, environment and other circumstances of their use. The ED must evaluate the specifics of each individual owner's use calculations, for their own HRSGs. Inasmuch as the ED's Appealed Decision fails to comply with and statutory or regulatory requirements or precedent and specifically ignores all actual evidence, it simply must be remanded.

WHEREFORE, PREMISES CONSIDERED, Appellant Borger Partners, Ltd. respectfully requests that the TCEQ remand this controversy and Borger's Application to the Executive Director for a new technical review and decision consistent with governing law and the credible evidence.

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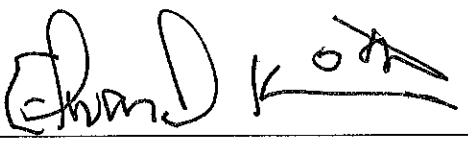
need for correctness and justice. Unfortunately, the only way to achieve that result at this point is to send the Executive Director "back to the drawing board."

[46] Also, the Executive Director's Appealed Decision is wholly contrary to his stated reason for requesting the remand: to implement a positive, 61% Partial Use Determination. *See* Johnson Aff., ¶¶4-5, Ex. 6. Having secured remand based on a specific promise to implement that use determination, he should not be permitted to recant his promise now. At least, the ED should be estopped from rendering any decision on Borger's Application less than the promised 61% Positive Use Determination. *See City of Hutchins v. Prasifka*, 450 S.W.2d 829, 836 (Tex. 1970) (noting that estoppel may apply to prevent manifest injustice).

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.

By: 

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CERTIFICATE OF SERVICE

I certify that the foregoing has been properly served on interested parties or their counsel of record on this 26th day of October, 2012.

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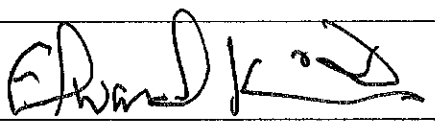

Edward Kliewer III / Thomas A. Countryman

EXHIBIT A

TCEQ Docket No. 2008-0832-MIS-U

In The Texas Commission on Environmental Quality

APPEAL OF THE EXECUTIVE DIRECTOR'S NEGATIVE USE DETERMINATION ISSUED TO BORGER ENERGY ASSOCIATES, LP FOR THE BLACKHAWK COGENERATION FACILITY

USE DETERMINATION APPLICATION NO. 07-11971

AFFIDAVIT OF MONA JOHNSON

(EXHIBIT "A" TO REPLY BRIEF OF APPELLANT, BORGER ENERGY ASSOCIATES, LP)

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

STATE OF TEXAS)
)
COUNTY OF HARRIS)

BEFORE ME, the undersigned authority, personally appeared MONA JOHNSON, a person known by me to be fully competent and qualified in all respects to make this Affidavit, who, after being by me first duly sworn, deposed as follows:

INTRODUCTION

1.

I am the Central Region Regulatory & Compliance Manager for Consolidated Asset Management Services ("CAMS"), Asset Manager for the subject Blackhawk Cogeneration Facility ("Facility"), which is owned by Applicant/Appellant Borger Energy Associates, LP. ("Borger"). I am over twenty-one (21) years of age, of sound mind, and have never been convicted of a felony or other crime involving moral turpitude. I am fully competent, authorized and qualified to make this Affidavit, and the information set forth herein is based upon my own personal knowledge gained while in the course and scope of my involvement with the Borger Blackhawk Cogeneration Facility. A true copy of my company "Bio," setting out my educational and employment background, is attached as Exhibit "1" hereto and incorporated herein for all purposes.

2.

On May 1, 2008, the Executive Director ("ED") of the Texas Commission on Environmental Quality ("TCEQ") awarded Borger a 100% positive use determination on its Use Determination Application No. 07-11971 (Tracking Number DPBlackhawk B) (the "Application," a true copy of which is attached and incorporated herein for all purposes as Exhibit "2"). The Application sought a Positive Use Determination (and related *ad valorem* property tax exemption) for Borger's heat recovery steam generators ("HRSGs") at the Facility. A true copy of the ED's May 1, 2008 100% Positive Use Determination of Borger's Application ("ED's Original Decision") is attached as Exhibit "3" and incorporated herein for all purposes. A true copy of the ED's Technical Review Document which establishes the Application's administrative completeness as of April 8, 2008, and which Borger received from the ED in support of the ED's Original Decision ("Borger TRD"), is attached as Exhibit "4" and incorporated herein for all purposes. As reflected in the Borger TRD, the ED concluded the Application was complete and sufficient.

3.

No Notice of Deficiency concerning the Application was ever provided by the ED to Borger.

4.

On May 14, 2008, however, the Hutchinson County Appraisal District ("County") appealed the ED's decision to the TCEQ. TCEQ's Public Interest Counsel filed its own Response ("PIC Response") to the ED's Original Decision on December 5, 2008, and a true copy thereof is attached as Exhibit "5" and incorporated herein for all purposes. The ED formed a

Work Group ("Work Group") of various industry representatives and specialists in the field to determine and quantify HRSGs' pollution control benefits as recognized by the Texas Legislature in Texas Tax Code Section 11.31(k)(8). *See* ED's December 3, 2008 Response Brief to Hutchinson County, *et al.*, Appraisal Districts' Appeals of the Executive Director's Use Determinations ("ED Response Brief," a true copy of which is attached and incorporated herein for reference purposes as Exhibit "6,") §IV, pp. 10-11.

5.

On December 3, 2008, the ED sought remand from the TCEQ of not just Borger's, but all other, then-pending HRSG-related appeals of his prior 100% Positive Use Determinations under "Tier IV." *Id.* As the sole basis therefore, the ED affirmatively represented that "The Executive Director ***intends to apply the adopted recommendation to all subsequently filed similar use determination applications, and to those applications currently pending adjudication***." [Emphasis added.] That recommendation was based, among other things, on the Work Group's efforts and read as follows:

> The thermal efficiency increase or production gain[1] derived from the installation of a HRSG is approximately 39%. Since this percentage represents the additional amount of electrical energy produced for a given heat input, it therefore represents the production value of the equipment. Based on this production value, the pollution control percentage of a HRSG installed at a combined-cycle facility is 61%. ***Staff is therefore recommending the positive use determination of 61% for the installation of a HRSG in a combined-cycle facility.***
>
> *Id.* at p. 11 [emphasis in original].

6.

On June 18, 2012, the ED reiterated his request for remand "for further processing," but without specifying any additional grounds or changing the basis for his prior request of December 3, 2008. See attached Exhibit "7," a true copy of the ED's 6/18/12 Request for Remand, p. 1. Remand finally was granted by the TCEQ General Counsel on June 29, 2012. See attached Exhibit "8," a true copy of TCEQ's 6/29/12 Notice of Remand, p. 1. Notwithstanding his prior representations as discussed above, however, on or about July 10, 2012, the ED instead rendered uniform, 100% Negative Use Determinations concerning all then-pending HRSG-related appeals and pending HRSG-related Applications filed under "Tier III" and/or well after Borger's Application was filed. These 100% Negative Use Determinations were all made on the sole, stated basis that, "Heat recovery steam generators are used solely for production and, therefore, are not eligible for positive use determination." *See, e.g.*, ED's 7/10/12 Notice of Negative Use Determination, Borger Energy Associates, LP., Application No. 07-11971 ("ED's Appealed Decision," attached as Exhibit "9" for reference purposes only). Notably, the ED's Appealed Decision was not accompanied by any new or revised Technical Review Document concerning the Application or any other form of factual data analysis or calculations supporting this change of position from the ED's Original Decision. Borger timely

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[1] Also noteworthy is the fact that the ED erroneously equates "thermal efficiency" with "production gain," when the concepts are actually fundamentally different. "Production" is a measure of ***output***, while "efficiency" is a measure of ***process***. They are not even necessarily related: *e.g.*, one can have great but inefficient output, and any combination of the two.

perfected its appeal of the ED's Appealed Decision by filing its Notice of Appeal[2] on July 30, 2012.

7.

The ED's Original Decision, his consideration and treatment of the Borger TRD, and his 19 other HRSG Tier IV 100% Positive Use Determinations discussed above all were patently different from his treatment of Borger's Application on appeal by the County. No reason has ever been given to Borger to support or explain the ED's change in position, especially not one involving specific, factual calculations or considerations. I am aware and affirm that, from a specific technical perspective, even the same model HRSGs are likely to perform at least somewhat differently, in terms of efficiency and output, in different locations and configurations. However, without any explanation of why the ED felt Blackhawk's HRSGs should be treated so drastically differently than others', Borger is deprived of fair notice of the basis for the ED's Appealed Decision. This is a particularly egregious omission on the part of the ED, because evaluating the specific pollution control benefits of particular HRSGs, in most every case, requires "custom" calculations based on data concerning the specific HRSGs in question and their actual effects and benefits in the given configuration.

METHODOLOGY ONE –**Avoided NOx Emissions**

8.

This Air Pollution Control Equipment Use Determination methodology compares, on a lbs-NOx/lb-steam produced basis: a) actual nitrogen oxide ("NOx") emissions from the Blackhawk Facility's two natural gas combustion turbines ("CTs"), each with a HRSG, to b) NOx emissions from boilers ("Boilers") at the Wood River Borger Refinery (the "Refinery"). The Boilers were effectively replaced by the HRSGs at the Facility, because steam from the HRSGs is provided to the Refinery for its operations and replaces the steam previously provided by the Boilers. In operation, Blackhawk's HRSGs channel existing "waste" heat energy in a way that converts existing water passing through the HRSGs to steam. In other words, the steam creation and corresponding cooling (or, more simply, the passive energy shift) that occurs in the HRSGs is just a managed reaction – not production - of the same elements (heat and water) produced in the absence of HRSGs. Such use of the HRSGs to create steam from otherwise wasted heat in the CTs exhaust gas results in higher Refinery thermal efficiency and fewer NOx emissions compared to using the Boilers to create steam.

a. On an annual basis, emissions attributed to steam production from the Blackhawk Facility's two HRSG units total approximately 44 tons (*i.e.,* 0.00001 lbs-NOx/lb-steam produced).

b. For the "replaced" Refinery boilers to produce an equivalent amount of steam as produced by the Facility's HRSGs, the Boilers would produce NOx emissions at an average rate of 0.00011 lbs-NOx/lb-steam produced. Consequently, the estimated NOx emitted if the Refinery boilers were to be used rather than the Blackhawk boilers is 510 tons of NOx per year.

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[2] A true copy of Borger's Notice of Appeal is attached and incorporated herein for all purposes as Exhibit "10."

c. Based on the foregoing, on an annual basis, roughly 466 tons of NOx are reduced by the use of the Blackhawk HRSGs rather than the Refinery's Boilers. This equates to roughly 91.4% pollution control ([510 tons – 44 tons] / 510 tons = 91.4%).

The 91.4% pollution control functionality of the Facility's HRSGs is consistent with the control levels obtained through the use of selective catalytic reduction systems ("SCR"). SCRs are a pollution control strategy that routinely receives a 100% Positive Use Determination from the TCEQ.

METHODOLOGY TWO – **Alternative Avoided NOx Emissions (Duff & Phelps)**

9.

This methodology is set forth at length in the attached, incorporated Application, and is simply reurged herein by reference. This methodology demonstrates that the Blackhawk Facility's HSRGs are entitled to a 100% Positive Use Determination.

CONCLUSIONS

10.

The foregoing methodologies utilize different data and calculations and perspectives to mathematically calculate potential Positive Use Determinations for Borger's HRSGs. These methodologies' results range from approximately 91.4% to 100%. The ED's Original Decision, the ED's Borger TRD, and the ED's 19 other, prior 100% Positive Use Determinations for HRSGs under Tier IV also confirmed a 100% Positive Use Determination. HRSGs conserve fossil fuel and reduce emissions by transferring energy into different forms. The EDs 100% *Negative* Use Determination is insupportable based on the actual data and calculations set forth herein.

11.

In fact, the ED's Appealed Decision appears to take no note of any hard data or calculations in favor of a "one-size-fits-all" determination based solely on conclusory rhetoric. The ED appears to wholly disregard not just all Owners' rationale and data but also: the work of the ED's own Work Group; and the ED's own Borger TRD and his 19 other Tier IV 100% Positive Use Determinations, and the ED's own pledge to implement a sixty-one percent Positive Use Determination for all pending and future HRSG Applications. The ED's Appealed Decision, at least insofar as it impacts Borger's Application, should be remanded with instructions that the ED render a new decision based on data provided by Borger and supported by reasonable calculations and rationale.

12.

Finally, even if a piece of equipment is "involved in production," that does not necessarily eliminate all potential *ad valorem* tax exemptions associated with its use. To decide otherwise, as the ED apparently has, is effectively to rewrite the statutory exemption for HRSGs to the point of complete nullification.

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this, the 24th day of October, 2012.

Mona Johnson, Affiant

Notary Public

Heather Degen
My Commission Expires
01/20/2016

EXHIBIT 1

Mona Caesar Johnson, P.E.

Summary

Over twenty years of environmental management experience with an emphasis on air quality permitting and compliance projects in the state of Texas. As an air quality consultant, led projects for the specialty chemical manufacturing, electric power generation, gas pipelines, printing and publishing, and the federal government sectors. Accountable for managing all aspects of work activities, including technical quality, schedule, budget, marketing, proposal writing, and staff recruiting, development, and training. Recent positions involve regional corporate-level leadership of multi-media environmental and regulatory (NERC, FERC, DOE, PUCT) programs for several power generation facilities and projects.

Professional History

Consolidated Asset Management Services, LLC (July 2009 – present)
Manager, Regulatory & Compliance, Central Region

ReNu Power Holdings, LLC (August 2008 – June 2009)
Health Safety and Environmental Manager, Houston, Texas

URS (1996 to August 2008)
Business Development, Environmental Business Line, URS, Houston, Texas, 2008
Group Leader, Air Quality Business Unit, URS, Houston, Texas, 2002-2007
Senior Project Manager, URS, Houston, Texas, 2000-present
Project Engineer, Dames & Moore, San Antonio, Texas, 1998-2000
Staff Project Engineer, Dames & Moore, Austin, Texas, 1996-1998

Sabio Engineering & Measurement Technologies (1995-1996)
Engineering Marketing Manager, Georgetown, Texas

United States Army (1989-1993)
Environmental Engineer/1LT, US Army Environmental Hygiene Agency, Aberdeen, Maryland

Education

Environmental Engineering, MS, Syracuse University, Syracuse, New York (1995)

Mechanical Engineering, BS, Massachusetts Institute of Technology, Cambridge, Massachusetts (1989)

Professional Registration

Professional Engineer, Environmental Engineering, Texas, License #86291

EXHIBIT 1

Selected Areas of Experience

General Air Permitting for Industrial Clients. Project Manager or corporate leader for multiple private industry permitting projects. Developed strategic plans for authorizing changes related to new capital projects, plant modifications, and changes in operation. Lead and manage all technical aspects of projects including emission rate calculation preparation, regulatory review, BACT review, air dispersion modeling analyses, and negotiations with regulators, as required, as well as budget planning and ensuring deliverable schedules met. Facilitate interaction with site operations, regulatory agency staff, and consulting teams. Provide senior quality assurance reviews for other project managers.

Power Industry. Corporate environmental and regulatory manager for power development, operations and asset management company. Responsibilities include planning and overseeing multi-media environmental permitting and compliance tasks related to the development and operations of several projects in Texas, as well as regulatory compliance assurance. Prior experience as a consultant Task Leader and/or Project Manager responsible for developing PSD and New Source Review permit applications for client firms in the electric power industry in Texas and New Mexico. Experience includes completing screening and refined air dispersion modeling, BACT/LAER reviews, emission calculations, flow calculations, emission inventory development, process description development, State and Federal regulatory review, negotiations with State permit engineers, representing clients at public meetings, public notice package development, and negotiating final permit provisions.

Air Dispersion Modeling. As a junior-level consultant, applied standard regulatory models (ISC and SCREEN) as required for permitting projects. Completed numerous complex PSD, State, and Texas Health Effects Review modeling projects in all types of terrain and with numerous background sources. Typical sources include manufacturing facilities, painting operations, pharmaceutical production and combustion sources and power generation facilities. Analyses used to support State and Federal permitting applications primarily in the Southwestern United States, and World Bank review in countries such as Mexico, Brazil, Bolivia, Venezuela, Dominican Republic, and Panama. Modeled visibility (icing and fogging) and drift deposition impacts from cooling towers using the FOG and/or Seasonal Annual Cooling Tower Impacts (SACTI) models.

Federal Government. Managed the technical work and staff to support all aspects of the air quality compliance program at an Air Force Base in Texas. Sources of concern included painting operations, combustion units, engine testing, fuel cell maintenance, fuel transfer and storage, woodworking operations, welding, and abrasive blasting. Projects included Title V applicability assessment; periodic compliance audits and inspection preparation audits; updates to internal air emission inventory; implementation of a recordkeeping program to maintain synthetic minor source status; development of an electronic, real-time VOC tracking system to demonstrate compliance with Permit by Rule requirements for surface coating operations; and providing "on-call" consulting services related to air quality issues.

Printing/Publishing Industry. Managed the on-going air quality regulatory compliance activities for four printing/ publishing-related facilities in the Houston-Galveston non-attainment area. Provided technical oversight and direction to team that assists these facilities with Title V permitting, New Source Review and Nonattainment New Source Review permitting compliance, permit by rule review and documentation development, HMIS and SARA reporting as required, emission inventory development and preparation for Comprehensive Compliance Investigations and Title V inspections by the City of Houston.

EXHIBIT 2

DUFF & PHELPS

Dennis Deegear
Vice President
Phone:(512) 671-5523
dennis.deegear@duffandphelps.com

March 26, 2008

TCEQ - Cashiers Office MC-214
Building A
12100 Park 35 Circle
Austin, Texas 78753

Subject: Application for Use Determination for Pollution Control Property
Blackhawk Station - 119 N. Spur Co-Gen Place Borger, TX 79008

Enclosed please find one application (the "Application") for property tax exemptions for certain qualifying pollution control property at the Blackhawk Station Project (the "Facility") in Hutchinson County, Texas.

Pursuant to Title 30 of Chapter 17 of the Texas Administrative Code, the Application has been prepared using the Texas Commission on Environmental Quality ("TCEQ") Application for Use Determination for Pollution Control Property. The enclosed application is a Tier IV Application.

Submission of this Application is required as a process step in the TCEQ's pollution control certification process for tax exemption of certain assets used in pollution control capacities within the Facility. As outlined by the application instructions, the fee for this Tier IV Application is $500. Enclosed please find a check for $500 for the Application processing.

The Application can be summarized as follows:

Property	Description	Estimated Cost
Tier IV	See Attached Schedule	$13,906,514

Please send one copy of the completed property tax exemption Use Determination to the following address:

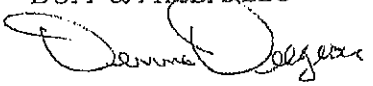
Duff and Phelps LLC
c/o Dennis Deegear
919 Congress Ave.
Suite 1450
Austin, TX 78701

EXHIBIT 2

If you have any questions regarding the Application or the information supplied with these Application, please contact Dennis Deegear of Duff & Phelps, LLC at (512) 671-5523 or e-mail at dennis.deegear@duffandphelps.com.

Very truly yours,

DUFF & PHELPS, LLC

Signature: 

Name: Dennis Deegear

Title: Vice President

Enclosures

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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

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CHIEF CLERKS OFFICE

The TCEQ has the responsibility to determine whether a property is a pollution control property. A person 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 Tax Relief for Pollution Control Property Program at (512) 239-3100. The application should be completed and mailed, along with a complete copy and 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
- ☐ Partnership
- ☑ Limited Partnership
- ☐ Sole Proprietor
- ☐ Utility
- ☐ Other

B. Size of company: Number of Employees

- ☑ 1 to 99
- ☐ 100 to 499
- ☐ 500 to 999
- ☐ 1,000 to 1,999
- ☐ 2,000 to 4,999
- ☐ 5,000 or more

C. Business Description: Combination Electric and Other Utility (4931)

2. TYPE OF APPLICATION

- ☐ **Tier I $150 Application Fee**
- ☐ **Tier II $1,000 Application Fee**
- ☐ **Tier III $2,500 Application Fee**
- ☑ **Tier IV $500 Application Fee**

NOTE: Enclose a check, money order to the TCEQ, or a copy of the ePay receipt along with the applicaton to cover the required fee.

3. NAME OF APPLICANT

A. Company Name: Borger Energy Associates, LP

B. Mailing Address (Street or P.O. Box): 7001 Boulevard 26, Suite 310

C. City, State, ZIP: North Richland Hills, Texas 76180

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

A. Name of facility: Blackhawk Station

B. Type of Mfg Process or Service: Combination Electric and Other Utility (4931)

C. Street Address: 119 N. Spur Co-Gen Place

D. City, State, ZIP: Borger, TX 79008

E. Tracking Number Assigned by Applicant: DPBlackhawk B

F. Customer Number or Regulated Entity Number: N/A

5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY

A. Name of Appraisal District: Hutchinson

B. Appraisal District Account Number: 990 (1000, 1010, 1100, 1120, 1140, 1160, 1180, 1200, 1220, 1240)

6. CONTACT NAME (must be provided)

A. Company/Organization Name:	Duff and Phelps LLC	
B. Name of Individual to Contact:	Dennis Deegear	
C. Mailing Address:	919 Congress Ave.	Suite 1450
D. City, State, ZIP:	Austin, TX 78701	
E. Telephone number and fax number:	(512) 671-5523	Fax (512) 671-5501
F. E-Mail address (if available):	dennis.deegear@duffandphelps.com	

7. RELEVANT RULE, REGULATION, OR STATUTORY PROVISION

Please reference Section 8. Each item is detailed with the proper statute, regulation, or environmental regulatory provision.

8. DESCRIPTION OF PROPERTY

Background

Blackhawk Station is a 225 MW cogeneration facility located in Borger, Texas owned by Borger Energy Associates LP. Blackhawk Station's design incorporates two Siemens 501D5A gas turbines, and two Deltak HRSGs. The exhaust from the combustion turbines is directed to the HRSGs where the thermal energy in the exhaust gases is recovered to generate steam. The high pressure steam produced in the HRSGs is exported to the adjoining Wood River Borger Refinery. Natural Gas serves as the fuel for each gas turbine.

Overview of Cogeneration Technology

The Facility is a cogeneration plant that consists of two gas-fired Combustion Turbines ("CTs") equipped with heat recovery steam generators (HRSG's) to capture heat from the turbine exhaust. Steam produced in the HRSG's provides steam for production purposes to the Facility's steam host, Wood River Borger Refinery LLC. Use of the otherwise wasted heat in the turbine exhaust gas results in higher plant thermal efficiency compared to other power generation technologies.

Combined heat and power (CHP) plants are often equipped with a steam turbine and have the added flexibility over a cogeneration plant to generate additional electricity if needed or sell its steam directly to an industrial facility commonly referred to as a "steam host". Additional efficiency is gained in CHP and cogeneration applications by using steam from the steam generator to serve direct thermal loads. Though increasing overall thermal efficiency, the choice of using steam for these applications instead of powering a steam-driven turbine reduces the electrical output of the plant.

The following overview describes technology that is common to both cogeneration and CHP electric power generation facilities. The significant difference between the two types of facilities is the use of the thermal energy generated by the combustion turbines. Because Blackhawk does not have a steam turbine and uses its thermal energy to supply steam to the Wood River Borger Refinery any portion of the

overview relating to steam turbine power generation does not apply to this facility.

The Brayton cycle is a constant pressure thermodynamic cycle that converts heat from combustion into work. A Brayton engine, as it applies to a gas turbine system, will consist of a fuel or gas compressor, combustion chamber, and an expansion turbine. Air is drawn into the compressor, mixed with the fuel, and ignited. The resulting work output is captured through a pump, cylinder, or turbine. Cogeneration systems typically make use of the waste heat from Brayton engines for steam production.

The Rankine cycle is a thermodynamic cycle that converts heat from an external source into work. In a Rankine cycle, external heat from an outside source is provided to a fluid in a closed-loop system. This fluid, once pressurized, converts the heat into work output using a turbine. The fluid most often used in a Rankine cycle is water (steam) due to its favorable properties, such as nontoxic and unreactive chemistry, abundance, and low cost, as well as its thermodynamic properties. The thermal efficiency of a Rankine cycle is usually limited by the working fluid. Steam generated in a cogeneration plant is typically sold to and directly used by a steam host.

By combining both gas and steam cycles, high input temperatures and low output temperatures can be achieved. A cogeneration plant has a thermodynamic cycle that operates between the gas turbine's high firing temperature and the waste heat temperature from its exhaust. This large range means that the Carnot efficiency of the cycle is high. The actual efficiency, while lower than this is still higher than that of either plant on its own. The thermal efficiency of a cogeneration plant can be measured as the net electric and steam power output of the plant divided by the heating value of the fuel.

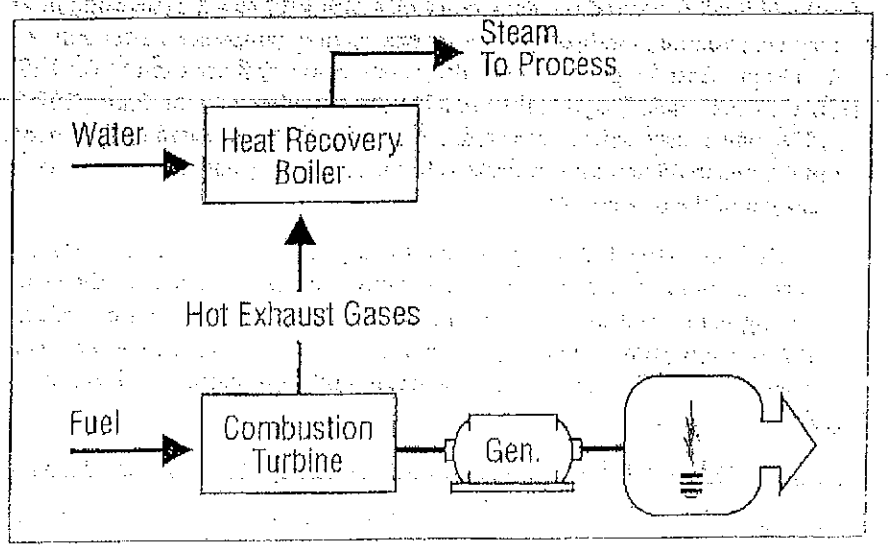

FIGURE 1 - Cogeneration Plant Configuration (1)

A single-train cogeneration plant consists of one CT, a generator, and a HSRG (See Figure 1 – Cogeneration Plant Configuration, below). Because of high thermal efficiency, high reliability, and low air emissions, cogeneration CT's and HRSG's have been the new resource of choice for bulk power generation and industrial steam production for well over a decade. Other attractive features include significant operational flexibility, the availability of relatively inexpensive power augmentation for peak period operation and relatively low carbon dioxide production.

Current Regulatory Authority for Output-Based Emissions

Innovative power technologies such as cogeneration technology offer enormous potential to improve efficiency and enhance the environmental footprint of power generation through the reduction and/or prevention of air emissions to the environment. Currently, two thirds of the fuel burned to generate electricity in traditional fossil-fired steam boilers is lost. Traditional U.S. power generation facility efficiencies have not increased since the 1950s and more than one fifth of the U.S. power plants are more than 50 years old. In addition, these facilities are the leading contributors to U.S. emissions of carbon dioxide, NOx, sulfur dioxide ("SO2"), and other contaminants into the air and water.

The ability to recognize and regulate the efficiency benefits of pollution reduction and/or prevention through the use of cogeneration technology is achieved through the use of Output-Based emissions standards, incorporated since September 1998 within the U.S. EPA's new source performance standards ("NSPS") for NOx, from both new utility boilers and new industrial boilers. Pursuant to section 407(c) of the Clean Air Act in subpart Da (Electric Utility Steam Generating Units) and subpart Db (Industrial-Commercial-Institutional Steam Generating Units) of 40 CFR part 60, the U.S. EPA revised the NOx emissions limits for steam generating units for which construction, modification, or reconstruction commenced after July 9, 1997 (3). Output-Based regulations are also exemplified by those used in the U.S. EPA's NOx Cap and Trade Program for the NOx State Implementation Plan ("SIP") Call of 1998, which uses units of measure such as lb/MWh generated or lb concentration ("ppm"), which relate to the emissions to the productive output – electrical generation of the process.(4)

The use of innovative technologies such as cogeneration units reduces fossil fuel use and leads to multi-media reductions in the environmental impacts of the production, processing transportation, and combustion of fossil fuels. In addition, reducing fossil fuel combustion is a pollution prevention measure that reduces emissions of all products of combustion, not just the target pollutant (currently NOx) of a federal regulatory program.

Authority to Expand Pollution Control Equipment & Categories in Texas

Under Texas House Bill 3732 ("HB3732") enacted in 2007, Section 11.31 of the Texas Tax Code is amended to add certain plant equipment and systems to the current list of air, water, or land pollution control devices exempt from property taxation in Texas.

Specifically, the language reads as follows:

SECTION 4. Section 11.31, Tax Code, is amended by adding Subsections (k), (l), and (m) to read as follows:
(k) The Texas Commission on Environmental Quality shall adopt rules establishing a nonexclusive list of facilities, devices, or methods for the control of air, water, or land pollution, which must include:
(1) coal cleaning or refining facilities;
(2) atmospheric or pressurized and bubbling or circulating fluidized bed combustion systems and gasification fluidized bed combustion combined-cycle systems;
(3) ultra-supercritical pulverized coal boilers;
(4) flue gas recirculation components;
(5) syngas purification systems and gas-cleanup units;
(6) enhanced heat recovery systems;
(7) exhaust heat recovery boilers;
(8) heat recovery steam generators;
(9) superheaters and evaporators;
(10) enhanced steam turbine systems;
(11) methanation;
(12) coal combustion or gasification byproduct and coproduct handling, storage, or treatment facilities;
(13) biomass cofiring storage, distribution, and firing systems;
(14) coal cleaning or drying processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology;
(15) oxy-fuel combustion technology, amine or chilled ammonia scrubbing, fuel or emission conversion through the use of catalysts, enhanced scrubbing technology, modified combustion technology such as chemical looping, and cryogenic technology;
(16) if the United States Environmental Protection Agency adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state;
(17) fuel cells generating electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste; and
(18) any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.
(l) The Texas Commission on Environmental Quality by rule shall update the list adopted under Subsection (k) at least once every three years. An item may be removed from the list if the commission finds compelling evidence to support the conclusion that the item does not provide pollution control benefits.
(m) Notwithstanding the other provisions of this section, if the facility, device, or method for the control of air, water, or land pollution described in an application for an exemption under this section is a facility, device, or method included on the list adopted under Subsection (k), the executive director of the Texas Commission on Environmental Quality, not later than the 30th day after the date of receipt of the information required by Subsections (c)(2) and (3) and without regard to whether the information required by Subsection (c)(1) has been submitted, shall determine that the facility, device, or method described in the application is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution and shall take the actions that are required by Subsection (d) in the event such a determination is made.

Under the TCEQ's recently updated "Tax Relief for Pollution Control Property – Application Instructions and Equipment and Categories List – Effective January 2008", the Equipment and Categories List - Part B ("ECL Part B") is a list of the pollution control property categories adopted and set forth in TTC Sec. 26.045(f). The taxpayer is to supply a pollution control percentage for the equipment listed in Part B via calculations demonstrating pollution control, prevention and/or reductions achieved by the listed equipment or systems.

The following property descriptions outline the environmental purpose, including

the anticipated environmental benefit of pollution control additions considered under the Application Instructions' ECL Part B that have been constructed and placed into use at the Facility as of its placed-in-service date, or installed subsequent to in-service since 1994:

Property Descriptions

Item #1 Cogeneration Gas Turbine Plant Heat Recovery Steam Generator ("HRSG") and Support Systems Tier IV B-8

40 CFR Part 60 Subparts DA and DB, NOx Limits for Electric Utility Steam Generating Units and Industrial-Commercial-Institutional Steam Generating Units for New Source Performance Standards ("NSPS").

TAC Rule 106.512, Standard Permit for Electric Generating Units (EGU)

NOTE: Permits issued under Texas Clean Air Act's Health & Safety Code Sections 382.011, applies to all electric generating units that emit air contaminants, regardless of size, and it is to reflect Best Available Control Technology ("BACT") for electric generating units on an output basis in pounds of NOx per megawatt hour, adjusted to reflect a simple cycle power plant.

The heat recovery steam generator ("HRSG") found in the Facility is a heat exchanger that recovers heat from a hot gas stream. A common application for an HRSG is in a cogeneration power station, where hot exhaust from a gas turbine is fed to an HRSG to generate steam which can either be used to drive a steam turbine or be sold directly to a steam host. This combination produces electricity in a more thermally efficient manner than either the gas turbine or steam turbine alone.

The HRSG is also an important component in cogeneration plants. Cogeneration plants typically have a higher overall efficiency in comparison to a combined cycle plant.

The Facility's HRSGs consist of three major components: the Evaporator, Superheater, and Economizer. The different components are put together to meet the operating requirements of the unit. Modular HRSGs normally consist of three sections: an LP (low pressure) section, a reheat/IP (intermediate pressure) section, and an HP (high pressure) section. The reheat and IP sections are separate circuits inside the HRSG. The IP steam partly feeds the reheat section. Each section has a steam drum and an evaporator section where water is converted to steam. This steam then passes through superheaters to raise the temperature and pressure past the saturation point.

Pollution Control Percentage Calculation: Avoided Emissions Approach

To calculate the percentage of the equipment or category deemed to be pollution control equipment, the Avoided Emissions approach has been used. This approach relies on thermal output differences between conventional electric power and steam generation equipment and the cogeneration system at the Facility. Specifically, the percentage is determined by calculating the displacement of emissions associated with the Facility's thermal output and subtracting these emissions from a baseline emission rate. These displaced emissions are emissions that would have been generated by the same thermal output from conventional equipment.

Greater energy efficiency reduces all air contaminant emissions, including the

greenhouse gas, carbon dioxide. Higher efficiency processes include cogeneration, combined-cycle, and CHP generation. For electric generation the energy efficiency of the process expressed in terms of British thermal units ("BTU's") per Kilowatt-hour ("kWh"). Lower fuel consumption associated with increased fuel conversion efficiency reduces emissions across the board – that is NOx, SOx, particulate matter, hazardous air pollutants, and greenhouse gas emissions such as CO2.

In calculating the percent exempt for the listed items from the ECL-Part B, we utilized Output-Based NOx allocation method for both power generation projects that replaced existing facilities and "Greenfield" steam generation facilities. We looked at the various fossil fuel technologies in use today and chose the baseline electric power generation facility to be a natural gas-fired turbine driven generator without waste heat recovery. The construction of the Blackhawk station and its ability to produce steam replaced some of the steam production generated by the boiler steam plant located at the Wood River Borger Refinery. With this in mind the baseline steam generation facility selected is a gas-fired industrial steam boiler operated without the thermal benefit of waste heat recovery similar to the equipment operated by the refinery. We benchmarked this conventional generation to the subject natural gas-fired cogeneration equipment at the Facility. By doing so, we narrowed the heat rate factors as much as possible to be conservative and uniform in modeling. The benchmark heat rate factor is the following:

Natural Gas-Fired Turbine and Industrial Steam Boiler: 8,864 BTU's/kWh

This baseline heat rate purposely omits other fossil fuel sources in order to eliminate impurity type characteristics, which in turn eliminated the NOx emission and cost of control differences of each fossil fuel and generator type. Comparing the emissions impact of different energy generation facilities is concise when emissions are measured per unit of useful energy output. For the purpose of our calculations, we converted the energy output of the steam to units of kWh, and compared the total emission rate to the baseline facility.

The comparison steps to calculate the NOx reduction is as follows:

Calculation (Reference Schedule A)

Step 1 – Subject Output-Based Limit Calculation (lbs NOx / MWh)

(Input-based Limit (lbs NOx/MMBTU)) X (Heat Rate (Btu/kWh)) / (1,000,000 Btu / 1,000 kWh) = Output: (lbs NOx/MWh),

Step 2 – Subject Output Conversion Calculation (NOx Tons / Year)

(Output (lbs NOx/MWh) X (Unit Design Capacity (MW)) X (Capacity Factor) X ((365 Days) X (24 hrs/day)) / 2,000 lbs = Output: (NOx Tons/Year)

Step 3 – Baseline Output-Based Limit Calculation (lbs NOx / MWh)

(Input-based Limit (lbs NOx/MWh)) X (Heat Rate (Btu/kWh)) / (1,000,000 Btu / 1,000 kWh) = Output: (lbs NOx/MWh)

Step 4 – Baseline Output Conversion Calculation (NOx Tons / Year)

(Output (lbs NOx/MMBtu) X (Unit Design Capacity (MW)) X (Capacity Factor) X ((365 Days) X (24 hrs/day)) / 2,000 lbs = Output: (NOx Tons/Year)

Step 5 – Percent NOx Reduction Calculation

$((\text{Output Baseline})_{\text{step 4}} - (\text{Output Subject})_{\text{step 2}}) / (\text{Output Subject})_{\text{step 2}}$ = % Reduction Output Subject

Step 6 – Percent Exempt Calculation

(Total Subject Facility Cost) X (% NOx Reduction) = Capital Cost of NOx Avoidance

Step 7 – Percent Exempt Calculation

Total Cost of NOx Avoidance / Total Cost of HB 3732 Equipment = % Exempt

- If % Exempt is greater than 100% HB 3732 Equipment is 100% Exempt
- If % Exempt is less than 100% then HB 3732 Equipment is partially exempt at the Step 6 calculation.

NOTE: See the attached calculation sheet for the details regarding Facility-specific calculations and property tax exemption percentage results based upon these calculations.

REFERENCES

1. "Output-Based Regulations: A Handbook for Air Regulators", U.S. Environmental Protection Agency, Office of Atmospheric Programs – Climate Protection Partnerships Division, August, 2004, p.4.

2. "Output-Based Emissions Standards; Advancing Innovative Energy Technologies", Northeast-Midwest Institute; 2003, p. 9.

3. IBID, p.13.

4."Output-Based Regulations: A Handbook for Air Regulators", U.S. Environmental Protection Agency, Office of Atmospheric Programs – Climate Protection Partnerships Division, August, 2004, p.4.

5. http://www.cogeneration.net/Combined_Cycle_Power_Plants.htm

6. "Output-Based Emissions Standards; Advancing Innovative Energy Technologies", Northeast-Midwest Institute; 2003, p. 9.

9. PARTIAL PERCENTAGE CALCULATION

N/A.

10. PROPERTY CATEGORIES AND COSTS

See attached Schedule 10.

11. EMISSION REDUCTION INCENTIVE GRANT

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

[ ] Yes [X] No

12. 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 written notice.

13. FORMAL REQUEST FOR SIGNATURE

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

NAME: Dennis Duggan DATE: 3/27/08

TITLE: Vice President

COMPANY: Duff & Phelps LLC

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.

14. DELINQUENT FEE/PENALTY PROTOCOL

This form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol. (Effective 9/1/2006)

Blackhawk Station
119 N. Spur Co-Gen Place
TCEQ Use Determination Application - 2008
Schedule 10
Tier IV

10. PROPERTY CATEGORIES AND COST

PROPERTY	PROJECT ID. NO.	IN SERVICE DATE	TAXABLE ON OR BEFORE 1/1/94? (Y / N)	TIER IV DECISION FLOW CHART BOX	ECL NUMBER	ESTIMATED PURCHASE COST	% EXEMPT	EXEMPT COST
Heat Recovery Steam Generators (HRSG)	1	1998	N	3	B-8	$13,906,514	100%	$13,906,514
					Tier IV Total	$13,906,514		$13,906,514

Borger Energy Associates LP
Blackhawk Station
Schedule A - 2008 Thermal Efficiency Calculation

Subject Details:	
Average Heat Rate [1]	7,781 (Btu/kWh)
NOx Emission [2]	15 ppm
Plant Capacity [3]	225 MW
Capacity Factor [4]	78.50%
Technology [5]	Cogeneration
Total Subject Facility Cost [6]	$128,687,174
Total Cost of Tier IV Equipment [7]	$13,906,516
Baseline Details:	
Average Heat Rate [8]	8,864 Btu/kWh
Technology [9]	Industrial Steam Boiler

STEP 1
Subject Output-Based Limit Calculation (lbs NOx / MWh)

Input-based Limit (lbs NOx/MMBtu)	x	Heat Rate (Btu/kWh)	/	Unit Conversions (1,000,000 Btu / 1000 kWh)	=	Output-based Limit (lbs NOX/MWh)
0.0551		7,781		1,000		0.4287

STEP 2
Subject Output Conversion Calculation (NOx Tons / Year)

Output-based Limit (lbs NOx/MWh)	x	Capacity (MW)	x	Capacity Factor	x	Unit Conversions (365 days * 24 Hours / 2,000 lbs)	=	Output NOx (Tons/Year)
0.4287		225		78.50%		4		302.9

STEP 3
Baseline Output-Based Limit Calculation (lbs NOx / MWh)

Input-based Limit (lbs NOx/MMBtu)	x	Heat Rate (Btu/kWh)	/	Unit Conversions (1,000,000 Btu / 1000 kWh)	=	Output-based Limit (lbs NOx/MWh)
0.0551		8,864		1,000		0.4884

STEP 4
Baseline Output Conversion Calculation (NOx Tons / Year)

Output-based Limit (lbs NOx/MWh)	x	Capacity (MW)	x	Capacity Factor	x	Unit Conversions (365 days * 24 Hours / 2,000 lbs)	=	Output NOx (Tons/Year)
0.4884		225		78.50%		4		345.1

STEP 5
Percent NOx Reduction Calculation

(Output Baseline	-	Output Subject)	/	Output Subject	=	% NOx Reduction
345.1		302.9		302.9		13.9%

STEP 6
Percent Exempt Calculation

Total Subject Unit Cost	X	% NOx Reduction	=	Capital Cost of NOx Avoidance
$128,687,174		13.9%		$17,887,517

STEP 7
Percent Exempt Calculation

Total Cost of NOx Avoidance	/	Total Cost of HB 3732 Equipment	=	% Exempt
$17,887,517		$13,906,516		128.6%

Conclude	100%

(1) - Heat rate represents plant actual heat rate (HHV) based on the energy value of the electricity and steam generated provided by the client
(2) - NOx emissions is the actual NOx pollution produce in ppm and was provided by the client
(3) - Plant capacity is the average nominal capacity and was provided by the client
(4) - Capacity factor represent an average annual capacity factor and was provided by the client
(5) - Technology represents the actual technology of the subject
(6) - Total subject facility cost represents the total cost to build the entire facility and it was determined based on data provide by the client
(7) - Total Tier IV equipment was determined by allocating the eligible TCEQ ECL part B equipment and their associated cost from actual data provide by the client
(8) - Baseline heat rate was developed using a combination of simple cycle electric power and stand alone industrial boiler steam generation
(9) - Baseline technology represents the boiler technology used by the host refinery for steam production. Steam produced by the subject cogeneration facility has displaced some of the steam produced by the host refinery resulting in less fuel consumption by the refinery's boiler equipment and lower overall NOx emissions

DUFF & PHELPS, LLC • 919 CONGRESS AVENUE, SUITE 1450 • AUSTIN, TX 78701 • TEL 512-671-5500 • FAX 512-671-5501

DUFF&PHELPS

December 5, 2008

Texas Commission on Environmental Quality
Attention: Docket Clerk
TCEQ Office of Chief Clerk MC 105
P.O. Box 13087
Austin, Texas 78711-3087

Subject: Response to the appeal of the Executive Director's Use Determination (07-11971), regarding Borger Energy Associates; TCEQ Docket Nos. 2008-0832-MIS-U

Dear Commissioners:

Pursuant to Title 30 of Chapter 17 of the Texas Administrative Code, the Applications under appeal were prepared using the Texas Commission on Environmental Quality's ("TCEQ's") Application for Use Determination for Pollution Control Property (TCEQ-0611). For these Tier IV applications, the subject pollution control property included in the application is listed on the TCEQ's Equipment & Categories List ("ECL"), and is identified and summarized as follows:

Cogeneration Gas Turbine Plant Heat Recovery Steam Generators ("HRSG") and Supporting Systems: (ECL:B-8)

Pertinent Rule(s), Regulation(s) or Law(s):
40 CRF Part 60 Subparts DA and DB, NOx Limits for Electric Utility Steam Generating Units and Industrial commercial Institutional Steam Generating Units for New Source Performance Standards ("NSPS")

TAC Rule 106.512, Standard Permit for electric Generating Units (EGU)

Note: Permits issued under Texas Clean Air Act's Health & Safety code Sections 382.011, applies to all electric generating units that emit air contaminants, regardless of size, and it is to reflect Best Available Control Technology ("BACT") for electric generating units on an output basis in pounds of NOx per megawatt hour, adjusted to reflect a simple cycle power plant.

BACKGROUND

Texas Pollution Prevention Issue

Currently in the U.S. two thirds of the potential energy of fossil fuels burned to generate electricity in traditional fossil-fired steam boilers is lost in the form of waste heat released into the atmosphere or surface waters located near these facilities. Traditional U.S. power generation plant efficiencies have not increased since the 1950's and more than one fifth of the U.S. power plant designs are more than 50 years old. These power generation facilities are the leading contributors to U.S. emissions of carbon dioxide, NO_x, sulfur dioxide, and other contaminants into the air and water due to facility operations.

Combined Heat and Power Technology Background

Innovative power systems such as combined cycle technology, and combined heat and power ("CHP") generation, offer enormous potential to reduce the environmental impacts of power generation through the reduction and/or prevention of air emissions to the environment through the efficient use of fossil fuel. CHP is best thought of as a system, rather than a specific technology or device for efficient use of the inherent chemical energy within fossil fuels such as natural gas. Texas leads the nation in CHP applications, with 23% of all U.S. CHP capacity located in Texas.[1] This CHP capacity produces 20% of the electricity used in Texas.[2]

The U.S. EPA defines cogeneration or CHP, as the simultaneous production of electricity and heat from a single fuel source, such as the natural gas used in the subject plant, Blackhawk Cogeneration Facility. Use of the otherwise wasted heat in the combustion turbine exhaust gas results in a higher plant-wide thermal efficiency compared to other combustion-based technologies. As well, state-of-the-art combined-cycle plants can convert about 50 percent of the chemical energy of natural gas into electricity (HHV basis). CHP systems' capture and use of waste heat allows them to achieve plant-wide fuel efficiencies between 60% and 90%.

The two most common CHP system configurations are:

- Gas turbine or engine with heat recovery unit
- Steam boiler with steam turbine

Gas turbine CHP systems, like the subject plant, Blackhawk Cogeneration Facility, generate electricity by burning a fossil fuel and then use a heat recovery unit to capture heat from the combustion system's exhaust stream. This heat is converted into useful thermal energy, usually in the form of steam or hot water. Per the US EPA, CHP plays an important role in meeting the US energy needs. As well, it reduces the environmental impacts of power generation because of both its fuel efficiency benefits in producing more energy output per pound of fuel burned, and in the resulting reduction in air emissions due to less fuel burned for the same energy output.

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[1] US DOE, Energy Information Agency (EIA), 2005 Data.
[2] IBID.

RESPONSE TO PETITION

We concur with the Texas Commissions Executive Use Determination letter received May 1st, 2008 whereby the outcome of their review resulted in a Use Determination as follows:

> **A 100% positive use determination for the two Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or State regulations.**

To date, neither the Appellant nor subsequent Executive Director-assembled workgroups have produced any valid evidence or reasonable agreed-upon conclusions that would lead us to believe that the facts, technical merits, and conclusion of our Application for Use Determination of Pollution Control Property are not valid.

The Executive Director's new technical position released on December 3rd, 2008 where by their findings produce a positive use determination of 61% for the HRSG is not technically correct and promotes environmental loss.

We are appealing the TCEQ's Workgroup and Executive Director's Recommendation regarding the modified version of the calculation presented by Cummings Westlake pertaining to a reasonable use determination percentage for HRSGs. The percentage calculation for this use determination based upon thermal efficiency increases resulting from technology provided by Cummings Westlake, LLC is flawed for a number of reasons. First, it departs from the Decision Flow Charts. Ironically, the TCEQ staff leveled this same change with regard to the application we originally submitted. Second, the calculation of a 39% increase in thermal efficiency is based upon all of the back-end equipment components of the plant contributing to the overall process, not just simply the HRSG - hence misappropriating efficiency and pollution control benefits to other items of machinery and equipment not currently identified on Part A or Part B of the ECL. Third, this very simplified calculation significantly underestimates the efficiency and pollution control contribution resulting from the HRSG as evidenced by the output based calculations provided in our application.

Finally, the most significant flaw in the Cummings Westlake calculation of the positive use determination is that it is contrary to public policy and to the purpose of H.B. 3732. Simple logic will prove that it would be inappropriate to provide a benefit based upon the reasoning provided in the Cummings Westlake calculation. By adopting this approach, it is inferred that there is an inverse relationship between thermal efficiency and pollution control. Assume that the efficiency increase was only 20% instead of 39%, then by the methodology set forth by the Cummings Westlake approach, there would be a resulting 80% positive use determination for the HRSG. Conversely, if there was a 60% increase in efficiency, as opposed to the 39%, then the positive use determination would be dramatically reduced to only 40%. This approach would hinder the advancement of clean energy projects through better efficiencies by penalizing the owner with a lower tax exemption percentage, which is clearly contrary to the intent of H.B. 3732.

Appellant: **I. Property Description**

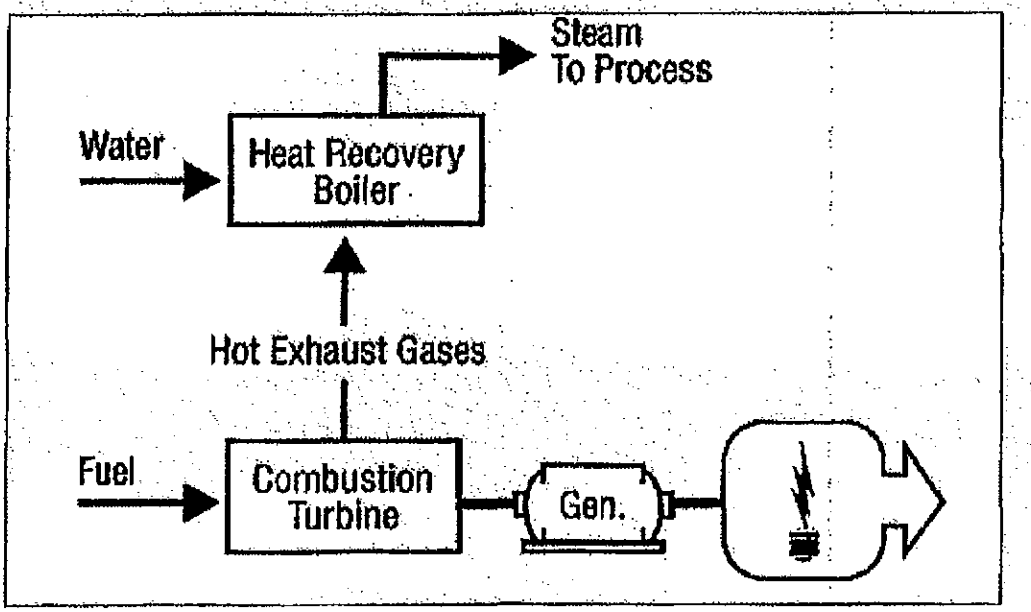
See Attached (Exhibit A)

Response: **I. Property Description**

The Blackhawk Cogeneration Facility is a 225 MW cogeneration facility located in Borger, Texas owned by Borger Energy Associates LP. Blackhawk Station's design incorporates two Siemens 501D5A gas turbines, and two Deltak HRSGs. The exhaust from the two combustion turbines is directed to the HRSGs where the thermal energy in the exhaust gases is recovered to generate steam. The HRSGs found in the Blackhawk Cogeneration Facility are therefore, in simple terms, heat exchangers that recover heat from a hot gas stream for reuse versus release into the atmosphere. A common application for an HRSG is in a cogeneration power station, where hot exhaust from a gas turbine is fed to an HRSG to generate steam which can be sold directly to a steam host.

The high pressure steam produced in the HRSGs is exported to the adjoining Wood River Borger Refinery. Natural gas serves as the fuel for each gas turbine. Use of the otherwise wasted heat in the turbine exhaust gas results in higher plant thermal efficiency compared to other power generation technologies employed in Texas.

The Figure below is representative of a simplified CHP plant process flow, similar to the Blackhawk Cogeneration Facility.



Appellant: **II. Rule Change**

See Attached (Exhibit A)

Response: **II. Proposition 2 Expansion for Additional Pollution Control Devices**

Under the legislation of Texas House Bill 3732 ("HB3732") enacted in 2007, Section 11.31 of the Texas Tax Code is amended by adding certain plant equipment and systems to the current list of air, water, or land pollution control devices. Specifically, the language reads as follows:

SECTION 4. Section 11.31, Tax Code, is amended by adding Subsections (k), (l), and (m) to read as follows:
(k) The Texas Commission on Environmental Quality shall adopt rules establishing a nonexclusive list of facilities, devices, or methods for the control of air, water, or land pollution, which must include:
(1) coal cleaning or refining facilities;
(2) atmospheric or pressurized and bubbling or circulating fluidized bed combustion systems and gasification fluidized bed combustion combined cycle systems;
(3) ultra-supercritical pulverized coal boilers;
(4) flue gas recirculation components;
(5) syngas purification systems and gas-cleanup units;
(6) enhanced heat recovery systems;
(7) exhaust heat recovery boilers;
(8) heat recovery steam generators;
(9) superheaters and evaporators;
(10) enhanced steam turbine systems;
(11) methanation;
(12) coal combustion or gasification byproduct and coproduct handling, storage, or treatment facilities;
(13) biomass cofiring storage, distribution, and firing systems;
(14) coal cleaning or drying processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology;
(15) oxy-fuel combustion technology, amine or chilled ammonia scrubbing, fuel or emission conversion through the use of catalysts, enhanced scrubbing technology, modified combustion technology such as chemical looping, and cryogenic technology;
(16) if the United States Environmental Protection Agency adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state;
(17) fuel cells generating electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste; and
(18) any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.
(l) The Texas Commission on Environmental Quality by rule shall update the list adopted under Subsection (k) at least once every three years. An item may be removed from the list if the commission finds compelling evidence to support the conclusion that the item does not provide pollution control benefits.

> *(m) Notwithstanding the other provisions of this section, if the facility, device, or method for the control of air, water, or land pollution described in an application for an exemption under this section is a facility, device, or method included on the list adopted under Subsection (k), the executive director of the Texas Commission on Environmental Quality, not later than the 30th day after the date of receipt of the information required by Subsections (c)(2) and (3) and without regard to whether the information required by Subsection (c)(1) has been submitted, shall determine that the facility, device, or method described in the application is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution and shall take the actions that are required by Subsection (d) in the event such a determination is made.*

Based upon the amended language of Section 11.31 of the Texas Tax Code, it is clear that the enumerated facilities, devices or methods must be considered in whole, or in part, as pollution control facilities, devices or methods by the TCEQ; the TCEQ must treat the enumerated facilities, devices or methods as eligible, in whole or in part, for property tax exemption as pollution control property; and finally, such eligibility for tax exemption must be based upon a methodology to be established by the TCEQ. Therefore, in response to the concern raised by the appellant, it is our contention that the HRSGs embedded within the CHP system of the subject plant are to be treated as qualifying pollution control facilities, devices or methods, and are no longer to be considered solely within the context of a power/steam generation use.

TCEQ's updated ***"Tax Relief for Pollution Control Property – Application Instructions and Equipment and Categories List – Effective January 2008"*** incorporates a list of the pollution control property categories adopted and set forth in TTC Sec. 26.045(f). Item B-8 of the ECL – Part B lists Heat Recovery Steam Generators (HRSGs).

As required in these instructions, the taxpayer, in its Tier IV application, supplied a pollution control percentage for the equipment listed in Part B via calculations demonstrating pollution control, prevention and/or reductions achieved by the listed equipment or systems, i.e., the subject facility's HRSGs. The subject facility received a 100% property tax exemption from the TCEQ for its HRSGs based upon the technical and statutory positions represented in the facility's application dated Mach 27, 2008.

Current Regulatory Authority for Output Based Emissions Standards

Consideration of the use of output based emissions standards, as is now incorporated within the U.S. EPA's New Source Performance Standards ("NSPS") for NO_x, are gaining importance for a reason: by determining emission levels based upon the amount of electricity and or thermal energy generated, output based standards support improved efficiency and pollution prevention without regard to the type of fuel or technology used to achieve that improvement. The use of innovative methods of power generation such as combined cycle and CHP reduces fossil fuel use and leads to multi-media reductions in the environmental impacts of the production, processing transportation, and combustion of fossil fuels. Reducing fossil fuel combustion is a pollution prevention measure that reduces emissions of all products of combustion, not just the target pollutant of a regulatory program.

Appellant: **III. Compliance**

See Attached (Exhibit A)

Response: **III. Compliance**

The basis by which the taxpayer represented the percentage of tax exemption eligibility for the HRSGs utilized an output-based emissions philosophy to demonstrate the level of emissions avoidance, or reduction, achieved by incorporating the CHP system approach within the Facility's operations. Emissions reductions, as represented by NO_x emissions reductions achieved through fuel consumption savings, represents the pollution control or prevention purpose of the CHP system. For simplicity, NO_x emissions were chosen; additional emissions reductions for SO_2, CO_2, etc., were also available.

Currently, the subject facility's input based NOx emissions standard, as represented in data provided by the taxpayer, does not recognize the subject facility for its fuel consumption savings and resulting emissions reductions. By establishing the amount of reduction found by using output based annual emissions versus input-based standards and multiplying this amount by the subject facility's historical costs, we were able to derive a surrogate for the subject plant's capital costs dedicated to additional NOx emissions avoidance, above the historically granted pollution control exemptions recognized on prior TCEQ Tier I or II application reviews. As this value was equal to or greater than the historical cost of the equipment item established on the ECL – Part B, it was considered to be eligible for 100% tax exemption status.

The subject appeal requests that the 100% tax exemption status granted under the methodology demonstrated be vacated and that the technical presumption that the HRSGs are major components of electrical and/or steam production be the only measure of equipment contribution to the subject facility's performance. This argument has ignored the broader policy-driven mandate established in Texas to support and further efficiency in fuel consumption in the state as a measure of pollution control. It also ignores the presentation of fact - made earlier within this rebuttal - that CHP is recognized by the U.S. EPA, by the state of Texas, and in most industry applications currently using such systems have resulted in the prevention and/or reduce air pollution in the State under an output based emissions standard.

Appellant: **IV. Limitations**

See Attached (Exhibit A)

Response: **IV. Limitations**

Pollution control percentages greater than 100% is not a flawed calculation; the breakpoints for facility-wide contributions versus equipment-specific contributions should be made relative to the necessary balance-of-plant systems and equipment supportive of the HRSGs in the subject facility. We agree with the appellant that the entire balance of plant equipment that supports the HRSG, e.g., the steam condensing systems, circulating water systems, chemical treatment systems etc., are completely intertwined and necessarily included within the plant-wide calculation of fuel efficiency and emissions reductions for CHP and combined cycle systems.

Therefore, although all such systems and equipment would more appropriately be identified as tax exempt for its emissions prevention capabilities, it can be inferred that the Texas Legislature judiciously considered the two major pieces of equipment within the Combined Cycle and CHP systems - HRSGs and enhanced steam turbine systems - and enumerated them specifically in the equipment list that ultimately exists in the final statute for tax exemption consideration. It is therefore the taxpayer's contention that such equipment's 100% exempt status represents that portion of the entire balance of plant CHP systems eligible for exemption and the remaining portion of the subject plant remain taxable for property tax considerations.

Appellant: **V. Conclusions**

See Attached (Exhibit A)

Response: **V. Conclusions**

As stated in the sections above, it is the taxpayer's continued belief, as demonstrated through the Avoided Emissions Approach presented in the attached Appendix, that the HRSGs found in the subject plant are 100% exempt from property tax under their definition as pollution control facilities, devices or methods within the statute established by the Texas Legislature, and that their eligibility as pollution control/pollution prevention devices may be measured through a calculation of emissions avoidance demonstrated within the calculations developed.

If you have any questions regarding the application or the information supplied with these application, please contact me at (512) 671-5580 or Ms. Kathy Tronsberg of Duff & Phelps LLC at (215) 430-6059.

Very truly yours,

Mr. Greg Maxim
Duff & Phelps LLC.

Enclosures

cc: Kathy Tronsberg (Duff & Phelps LLC - Philadelphia)
Rick Fine (Duff & Phelps LLC - Austin)

APPENDIX

Avoided Emissions Approach

This approach relies on thermal output differences by calculating the displacement of emissions associated with the thermal output and subtracting them from a baseline emission rate. These displaced emissions are emissions that would have been generated by the same thermal output from a conventional system. Greater energy efficiency reduces all air contaminant emissions, including the greenhouse gas carbon dioxide. Higher efficiency processes include combined cycle operation and combined heat and power (CHP) generation. For electric generation the energy efficiency of the process expressed in terms of MMBTU per Megawatt-hr. Lower fuel consumption associated with increased fuel conversion efficiency reduces emissions across the board – that is NOx, SOx, PM, hazardous air pollutants, and greenhouse gas emissions.

In calculating the percent exempt for the listed items from the ECL-Part B, Duff & Phelps LLC utilized an output based NOx allocation method for both Greenfield and Replacement power and heat generation. We looked at the various fossil fuel technologies in use today and chose the baseline facility to be a natural gas fuel-fired steam generator without waste heat recovery. The construction of the Blackhawk station and its ability to produce steam replaced some of the steam production generated by the boiler steam plant located at the Wood River Borger Refinery. With this in mind the baseline steam generation facility selected is a gas-fired industrial steam boiler operated without the thermal benefit of waste heat recovery similar to the equipment formerly operated by the refinery. Duff & Phelps LLC benchmarked this conventional generation to the subject natural gas-fired cogeneration equipment at the Facility. By doing so, we narrowed the heat rate factors as much as possible to be conservative and uniform in modeling. The benchmark heat rate factor is the following:

- Natural Gas-Fired Turbine and Industrial Steam Boiler: **8,864 BTU's/kWh**

This heat rate baseline purposely omits other fossil fuel source in order to eliminate impurities typed characteristics, which in turn eliminated the NOx emission and cost of control differences of each fossil fuel and generator type. Comparing the emissions impacts of different energy generation facilities is easy and clear when emissions are measured per unit of useful energy output. For the purpose of our calculations, we converted all the energy output to units of MWh (1 MWh = 3.413 MMBtu), and compared the total emission rate to the baseline facility.

The comparison steps to calculate the NOx reduction are as follows:

A. Plant Input Factors

Input-based Limit = 0.0551 lbs NOx/MMBtu
Unit Design Capacity = 225 MW
Capacity Factor = 78.5 Percent
Baseline/Replacement Plant Heat Rate = 8,864 Btu/kWh
Subject Plant Heat Rate = 7,781 Btu/kWh

B. Calculation

Step 1 – Subject Plant

$$\frac{(\text{Input Based Limit}) \times (\text{Heat Rate})}{1{,}000{,}000\ \text{Btu}} \times 1{,}000\ \text{kWh/MWh} = \text{Output : lbs NOx/MWh}$$

Step 2 – Subject Plant

$$\frac{(\text{Output}) \times (\text{Unit Design Capacity MW}) \times (\text{Capacity Factor}) \times (365\ \text{Days}) \times (24\ \text{hrs/day})}{2{,}000\ \text{Tons}} = \text{Output : NOx Tons/Year}$$

Step 3 & 4 – Baseline Plant or Replacement Plant
Same as Step 1 and Step 2 (except use Baseline Heat Rate)

Step 5 – Percent NOx Reduction Calculation

$$\frac{(\text{Output Baseline}) - (\text{Output Subject})}{(\text{Output Subject})} \times 100 = \%\ \text{Reduction}$$

Step 6 – Percent NOx Reduction Calculation

(Total Subject Unit Cost) (% Reduction) = Capital Cost of NOx Avoidance

Step 7 – Percent Exempt Calculation

$$\frac{\text{Total Cost of NOx Avoidance}}{\text{Total Cost of HB 3732 Equipment}} \times 100 = \%\ \text{Exempt}$$

- If % Exempt is greater than 100 then HB 3732 Equipment is 100% Exempt
- If % Exempt is less than 100 then HB 3732 Equipment is partially exempt at the Step 7 calculation

EXHIBIT A

Concerning Eligibility of Heat Recovery Steam Generators

in the

Blackhawk Cogeneration Plant

for

Texas Commission on Environmental Quality

Proposition 2 - Property Tax Exemption Program

By: Charles Wayne Frazell P.E.

I. Property Description

Cogeneration power plants consist of one or more generators powered by industrial size jet engines. These engines can be fueled by most combustible gas or liquids, but currently, most are fueled by natural gas. The hot exhaust from these engines is passed through a heat recovery steam generator (HRSG). A HRSG is essentially a boiler without the burners. The Blackhawk plant boilers create steam that is sold to a neighboring oil refinery.

II. Rule Change

The TCEQ rules were changed in response to the 2007 Texas Legislature HB 3732. The modified rules created the Part B List which includes Exhaust Heat Recovery Boilers (B-7) and Heat Recovery Steam Generators (B-8).

A HRSG is often added to recover exhaust gases to preheat water entering the boiler of a conventional boiler to improve efficiency, but, they are not the driving force behind the plant production. I believe that this is the type of application that was intended by the inclusion of B-7 and B-8 in the TCEQ Part B List.

III. Compliance

To some it will appear that the boiler that recovers the exhaust heat from the turbine engines qualifies as a pollution control item. This of course ignores the fact that this boiler is a major component of production. It was installed to produce steam to sell and not to reduce pollution. If the jet engines were not ducted to the boiler and burners were added, the HRSG side of the plant would operate as a conventional steam power plant. The Blackhawk plant uses burners to produce steam to sell when the jet engines are down for repair. It is not the boiler that reduces the pollution. Ducting the hot gases from the jet engine(s) reduces the pollution by reducing the need for an additional heat source (burners).

As a general rule when a component for pollution control is removed, there is little or no loss in production. For example, when a catalytic converter is removed from an engine it still produces the same horsepower. If electronic precipitators are removed from the exhaust of a coal-burning power plant, it still produces the same amount of electricity.

If the boiler is removed from a cogeneration power plant, there is no steam produced. Since removal of this component eliminates production of a product (steam), this boiler is primarily production equipment. It is not a pollution control device.

In 1992 the people of Texas voted and approved Proposition 2 creating the current environmental tax exemption. The ballot read "The constitutional amendment to promote the reduction and encourage the preservation of jobs by authorizing the exemption from ad valorem taxation of real and personal property **used for the control of air, water, or land pollution**." These boilers are used for production and not to control pollution. I believe the majority of the people would have voted "NO" on this proposition, if they thought it would include production equipment that produces INCOME and is not MANDATED by law!

IV. Limitations

A detailed description of what will be exempted needs to be provided to the appraisal district and not just identifying the HRSG. If the HRSG is found to be pollution control equipment, where is the limit? Do we also include the deaerator, the condenser, the pumps and all of the other steam piping and equipment which is installed to produce INCOME? Should we also exempt the plant lighting since this yields fewer emissions than if they had gas lamps? Although there are safety and convenience reasons for electric lighting, the primary reason for their installation is economics - not pollution control.

The primary reason for building a cogeneration power plant is economics and not pollution control. If the gas turbine is removed, then all you need is a set of burners and an intake fan to have the same production on the steam side. Since this type of boiler is a major component of production, it is not pollution control equipment. Only the ducting that conducts the exhaust heat from the gas turbine to the boiler should receive a 100% exemption.

V. Conclusions

The Texas Commission on Environmental Quality TCEQ rule changes in response to the 2007 Texas Legislature HB 3732 that created the new Part B non-exclusive list was intended to clarify pollution control devices not previously recognized. There was no mention of including equipment that is in place for producing a product.

The boiler in a cogeneration power plant is installed to produce steam to sell rather than to reduce pollution and does not qualify for a 100% tax exemption. **Therefore, I respectfully request that no Use Determination be granted for the primary boiler (HRSG) of any cogeneration power plant.** Thank you for your favorable consideration.

BROADCAST REPORT

TIME : 12/05/2008 18:46
NAME : D&P.AUSTIN
FAX : 5126715501
TEL :
SER.# : BROJ7J706136

PAGE(S) 17

DATE	TIME	FAX NO./NAME	DURATION	PAGE(S)	RESULT	COMMENT
12/05	18:26	STEPH PERDUE	02:47	17	OK	ECM
12/05	18:29	RON HATLETT	02:40	17	OK	ECM
12/05	18:32	BLAS COY	02:45	17	OK	ECM
12/05	18:35	BRIDGET BOHAC	02:45	17	OK	ECM
12/05	18:39	DIANA HOOKS	03:02	17	OK	ECM
12/05	18:42	WAYNE FRAZELL	03:54	17	OK	ECM

BUSY: BUSY/NO RESPONSE
NG : POOR LINE CONDITION
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2
2

919 CONGRESS 1450
AUSTIN TX 78701
512-671-5585
512-671-5501 FAX
LAURA.RUSSELL@DUFFANDPHELPS.COM

DUFF AND PHELPS

Fax

To: TCEQ 2008-0832-MIS-U **From:** Greg Maxim

Fax: **Pages:**

Phone: **Date:**

Re: BORDER ENERGY ASSOC **cc:**

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

- **Comments:**

Diana Hooks	806-273-3400
Wayne Frazell	817-927-5314
Stephanie Perdue	512-239-0606
Ron Hatlett	512-239-~~3165~~ 5678
Blas Coy	512-239-6377
Bridget Bohac	512-239-4007

EXHIBIT 3

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 1, 2008

CHIEF APPRAISER
HUTCHINSON COUNTY APPRAISAL DISTRICT
PO BOX 5065
BORGER, TX 79008

This letter is to inform you that on 5/1/2008, a final determination was issued with regard to Use Determination application 07-11971, filed by:

BORGER ENERGY ASSOCIATES LP
BORGER ENERGY BLACKHAWK STATION
119 N. SPUR CO-GEN PLACE
BORGER, TX 79008

A copy of the use determination is included with this letter. 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.

In order to qualify for a tax exemption, the applicant must file an exemption request with your appraisal district. This exemption request must be accompanied by a copy of the positive use determination issued by the TCEQ. If you have any questions regarding this Use Determination or the appeals process, please call me at 512/239-3100.

Sincerely,

David Greer
Team Leader, Pollution Prevention

EXHIBIT 3

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 1, 2008

DUFF & PHELPS LLC
DENNIS DEEGEAR
919 CONGRESS #1450
AUSTIN, TX 78701

This letter is to inform you that on 5/1/2008, the technical review of Use Determination Application 07-11971 was completed. This application is for:

BORGER ENERGY ASSOCIATES LP
BORGER ENERGY BLACKHAWK STATION
119 N. SPUR CO-GEN PLACE
BORGER, TX 79008

The use determination is included with this letter. In order to request an exemption, a copy of this Use Determination, along with a completed exemption request form #50-248 (can be found at www.cpa.state.tx.us), must be provided to the Chief Appraiser of the appropriate appraisal district. This request must be made by April 30.

House Bill 3121, enacted during the 77th Legislative 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 Tax Relief for Pollution Control Property Program at (512) 239-3100.

Sincerely,

David Greer
Team Leader, Pollution Prevention

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, **07-11971**, filed by:

BORGER ENERGY ASSOCIATES LP
BORGER ENERGY BLACKHAWK STATION
119 N. SPUR CO-GEN PLACE
BORGER TX 79008

The pollution control property/project listed in the Use Determination Application is:

This facility has two thermally efficient heat recovery steam generators (HRSGs). This application is a Tier IV application seeking a partial use determination for the two HRSGs.

The outcome of the review is:

A 100% positive use determination for the two Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

Executive Director

May 1 2008
Date

EXHIBIT 4

TAX RELIEF FOR POLLUTION CONTROL PROPERTY: TECHNICAL REVIEW DOCUMENT

Reviewed By: RLH App. No.: 07 - 11971 Review Start Date: 4/8/2008

Company Name: BORGER ENERGY ASSOCIATES LP
Facility Name: BORGER ENERGY BLACKHAWK STATION
County: HUTCHINSON Outstanding Fees: N
Batch/Voucher Number:B500156

ADMINISTRATIVE REVIEW

Administrative Complete Date:4/8/2008

TIER LEVEL
What Tier is this application? The application was filed as a Tier IV application. Is this the appropriate level?

The property listed on this application, Heat Recovery Steam Generators, is item B8 on the Equipment and Categories List. This application was filed as a Tier IV. Tier IV is the appropriate level for this application.

RELEVANT RULE, REGULATION, OR STATUTORY PROVISION
The rule listed in the application is: 40 CFR 60.44Da
The appropriate rule is: 40 CFR 60.44Da

Explain why this is the appropriate rule?

40 CFR 60.Subpart DA: Standards of Performance for New Stationary Sources. Standards of performance for Electric Utility Steam Generating Units for Which Construction is Commenced after September 18, 1978. This is an appropriate rule.

BRIEF DESCRIPTION OF PROPERTY
The property is described as:

This facility has two thermally efficient heat recovery steam generators (HRSGs). This application is a Tier IV application seeking a partial use determination for the two HRSGs.

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?

An adequate description of the property was provided, and the purpose of the property was listed. The anticipated environmental benefit is listed. Sketches and flow diagrams were provided.

DECISION FLOWCHART(30 TAC 17.15(a))
Mark the appropriate boxes: Box 3 Box 5 Box 6(IV) Y Box 10(III) Box 12(I) Box 13(II)
PART B DECISION FLOWCHART (17.15(b))
Mark the appropriate boxes: Box 1Y Box 2 Y Box 3 Y

Describe how the property flowed through the Decision Flowchart:

Since the property is listed on Part B of the Equipment & Categories List this property leaves the Decision Flow Chart at Box 6. It passes through Box 1 of the Part B Decision Flow Chart with a yes answer. The use of this property at a combined cycle plant, as opposed to having a simple cycle plant, provides an environmental benefit of reduced NOx emissions at the site. So there is a

Yes answer for Box 2, Since there is a reduction in NOx emissions there is an environmental rule which is being met so there is a yes answer to Box 3.

TIER III or IV APPLICATIONS

Does your calculation agree with the applicants?

No. The application contains a proposed formula for calculating the pollution control value of the HRSGs and the steam turbine. The formula is outcome determinative, and its focus is not on the pollution control aspect of the property. The Executive Director disagrees with this formula.

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.

The table was completed correctly. The applicant certified that all listed property became taxable for the first time after January 1, 1994. All the information necessary for conducting the technical review was included on the application.

TECHNICAL DEFICIENCIES

Is the application complete as received: Y If the application was not administratively complete explain below when justifying the final decision in the final determination section. If the application was not technically complete then:

Provide the language to be used in the Notice of Deficiency (NOD) letter:

Summarize the NOD response:

Provide the language used in the second NOD letter:

Summarize the second NOD response:

Provide the language used in the thied NOD letter:

Summarize the third NOD response:

FINAL DETERMINATION

If the property description has been summarized enter the detailed property description:

This facility has two thermally efficient heat recovery steam generators (HRSGs). This application is a Tier IV application seeking a partial use determination for the two HRSGs.

Provide the reason for your final determination:

The Heat Recovery Steam Generators meet all of the requirements of Chapter 17. A positive use determination based on the most appropriate formula should be issued for the Heat Recovery Steam Generators. The most appropriate formula has been determined by the Executive Director.

Provide the language for the final determination.

A positive use determination of 100% for the two Heat Recovery Steam Generators.

Highlight the required signatures and establish the appropriate due dates.

Reviewed: Randall Rackley **Date Signed:** 5/1/08

Peer Reviewed: Gary McArthur **Date Signed:** 5-1-08

Team Leader: [signature] **Date Signed:** 5/1/08

Section Manager: [signature] **Date Signed:** MAY 1 2008

Division Director: [signature] **Date Signed:** MAY 1 2008

EXHIBIT 5

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

December 5, 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

Re: **BORGER ENERGY ASSOCIATES, L.P.**
TCEQ DOCKET NO. 2008-0832-MIS-U

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Response to Hutchinson County Appraisal District's Appeal of the Executive Director's Use Determinations regarding Borger Energy Associates, LP.

Sincerely,

Amy Swanholm, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

EXHIBIT 5

TCEQ DOCKET NO. 2008-0832-MIS-U

IN THE MATTER OF THE APPEAL BY THE HUTCHISON COUNTY APPRAISAL DISTRICT OF USE DETERMINATION NO. 07-11971	§ § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The Office of the Public Interest Counsel (OPIC) files this response to Hutchinson County Appraisal District's ("Hutchinson") appeal of the Executive Director's (ED) use determinations regarding Borger Energy Associates L.P. ("Borger").

I. Introduction

In March 2008, Borger submitted a Tier IV use determination application to the Texas Commission on Environmental Quality ("TCEQ"). Borger sought use determinations for two thermally efficient heat recovery steam generators ("HRSG") associated with an electric power generation facility in Borger, Texas. The application describes the property as using natural gas-fired combined-cycle technology to power two combustion turbines. These turbines are routed to two heat recovery steam generators where the steam is then exported to a nearby refinery. The application also states that these facilities' emissions are regulated under 40 CFR part 60, § 407(c) of the Federal Clean Air Act, relating to NOx control. In support of the application Borger provided to the ED a proposed formula for calculating the pollution control values of the HRSGs and the turbine system.

On May 1, 2008, the ED issued a use determination for the Borger facility. The ED rejected Borger's proposed formula but nevertheless issued a 100% positive determination for

the HRSG units concluding that the equipment was pollution control equipment and was installed to meet or exceed federal and/or state regulations. The ED made a negative determination for the steam turbine because the use of the steam turbine provides no environmental benefit to the site and is not considered pollution control equipment. In rejecting the applicant's proposed formula for calculating the pollution control value of the HRSGs and steam turbines the ED concluded that the outcome from the applicant's formula is outcome determinative and did not focus on the pollution control aspects of the property. The ED provides no further explanation or analysis supporting his decision.

On May 16, 2008, Hutchinson appealed the ED's use determination for the two HRSG units. Hutchinson states that the HRSG units' primary purpose is not to satisfy air pollution requirements. Instead, Hutchinson claims the units are production equipment.

We take no position on the merits of the Appellant's issues with the ED's decision at this time because we find that the ED provided no basis for the percentages he concluded were appropriate. Based on the limited information in the record, we conclude that while the ED may reject an applicant's proposed formula for determining the percentages of equipment associated with pollution control, he must provide an explanation of the specific method and analysis used to determine the percentages he recommends. For this reason, OPIC recommends that the Commission remand this matter for a new technical review and new use determination that fully lays out the method and formula used to reach the correct percentage for the use determination.

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 Brazos' application was

deemed administratively complete after the February 7 effective date of the Chapter 17 amendments, the current Chapter 17 rules apply to these applications.

To obtain a positive use determination, "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." 30 TAC § 17.4(a). Chapter 17 contains a list of items (the Equipment and Categories List, or ECL) that have been predetermined as used either wholly or partly for pollution control purposes. 30 TAC § 17.14. The ECL contains two parts: "Part A is a list of the property that the executive director has determined is used either wholly or partly for pollution control purposes, [and] Part B is a list of categories of property which is located in Texas Tax Code (TTC), §11.31(k)." 30 TAC § 17.14(a). In addition, there are four different types of use determination applications;

Tier I-- An application which contains property that is in Part A of the figure in §17.14(a) or that is necessary for the installation or operation of property located on Part A of the Equipment and Categories List; 30 TAC § 17.2(13)

Tier II- An application for property that is used wholly for the control of air, water, and/or land pollution, but not on the Equipment and Categories List, located in §17.14(a); 30 TAC § 17.2(14)

Tier III-An application for property used partially for the control of air, water, and/or land pollution but that is not included on the Equipment and Categories List, located in §17.14(a); 30 TAC § 17.2(15)

Tier IV--An application containing only pollution control property which falls under a category located in Part B of the figure in §17.14(a). 30 TAC § 17.2(16)

Section 17.15(a) and (b) provide Decision Flow Charts for making use determinations. There are two Decision Flow Charts, one for non-Tier IV applications, and one for those applications with just items from Part B of the ECL. 30 TAC § 17.15(a) and (b).

In addition, a partial use determination "must be requested for all property that is either not on Part A of the ECL, or does not fully satisfy the requirements for a 100% positive use determination." 30 TAC § 17.17(a). To calculate partial use for Tier IV applications, the cost analysis procedure in 30 TAC § 17.17(d) must be used. *Id.* Section 17.17(d) states that "[i]t is the responsibility of the applicant to propose a reasonable method for determining the use determination percentage. It is the responsibility of the ED to review the proposed method and make the final determination." 30 TAC § 17.17(d).

Under § 17.25, an appraisal district or applicant has 20 days to appeal a use determination issued by the ED. 30 TAC § 17.25(a)(2)(A) and (B); 30 TAC § 17.25(b). Upon a timely appeal, the Commission may either "deny the appeal and affirm the ED's use determination" or "remand the matter to the ED for a new determination." 30 TAC § 17.25(d)(2). Should the Commission remand the use determination, the ED shall conduct a new technical review and issue a new use determination. 30 TAC § 17.25(e)(1)(A) and (B). This determination may be appealed under the same Chapter 17 procedures as the initial determination. 30 TAC § 17.25(e)(2). If the Commission denies the appeal and affirms the use determination, this decision is final and appealable. 30 TAC § 17.25(d)(3).

III. Analysis and Conclusion

Hutchinson appeals the ED's use determination, stating that the HRSG units are production equipment, and the primary purpose is not pollution reduction. Therefore, they argue, the HRSGs do not qualify for a 100% tax exemption. In his Use Determination analysis,

the ED disagrees with Borger's proposed formula for calculating the pollution control value of the HRSGs. Nevertheless, the ED recommends a 100% exemption for the HRSGs and concludes that "the most appropriate formula has been determined by the Executive Director." However, the ED does not explain what the formula is or how he reached the conclusion of a 100% positive use determination even though he disagrees with the calculation methodology provided by Borger. As described in 30 TAC § 17.17(d), the ED is required to review the proposed method and make the final determination. However, it is impossible to review that determination in this appeal without more information about how the ED calculated the use determination percentage. Therefore, OPIC recommends the Commission remand the matter to the ED for a new determination with instructions that the ED conduct a new technical review and issue a new use determination based upon a specific method and supporting analysis to assess a use determination percentage for the HRSGs. [1]

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By Via McWhatley
for
Amy Swanholm
Assistant Public Interest Counsel
State Bar No. 24056400
P.O. Box 13087, MC 103
Austin, Texas 78711
phone: (512) 239-5757
fax: (512) 239-6377

[1] As allowed by 30 TAC § 17.25(d)(2) 30 TAC § 17.25(e)(1)(A) and (B).

CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2008, the original and seven 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.

Vic McWhirter

for Amy Swanholm

Mailing List
Borger Energy Associates, LP
TCEQ Docket No. 2008-0832-MIS-U

Diana Hooks, RPA/RTA
Chief Appraiser
Hutchinson County Appraisal District
P.O. Box 5065
Borger, Texas 79008-5065
806/274-2294 FAX806/273-3400

Borger Energy Associates, LP
7001 Boulevard 26, Suite 310
North Richland Hills, Texas 76180

Dennis Deegear
Duff and Phelps LLC
919 Congress Ave., Suite 1450
Austin, Texas 78701
512/671-5523 FAX 512/671-5501

Pritchard & Abbott, Inc.
Attn: Mr. C. Wayne Frazell
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Fort Worth, Texas 76132-3687
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TCEQ Small Business & Environmental
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Austin, Texas 78711-3087
512/239-3100 FAX 512/239-5675

Docket Clerk
TCEQ Office of Chief Clerk MC 105
P.O. Box 13087
Austin, Texas 78711-3087
512/239-3300 FAX 512/239-3311

Bridget Bohac
TCEQ Office of Public Assistance MC 108
P.O. Box 13087
Austin, Texas 78711-3087
512/239-4000 FAX 512/239-4007

EXHIBIT 6

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 3, 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

Re: TCEQ Docket Numbers:
2008-0830-MIS-U (UD 07-11914/Tenaska Gateway Partners, Ltd)
2008-0831-MIS-U (UD 07-11966/Freestone Power Generation, L.P)
2008-0832-MIS-U (UD 07-11971/Borger Energy Associates, LP)
2008-0849-MIS-U (UD 07-11969/Brazos Valley Energy, L.P.)
2008-0850-MIS-U (UD 07-11994/Freeport Energy Center, L.P.)
2008-0851-MIS-U (UD 07-11926/Navasota Wharton Energy Partners, LP)
Executive Director's Response Brief to Rusk County, Freestone Central, Hutchinson County, Fort Bend Central, Brazoria County, and Wharton County Appraisal Districts' Appeals of the Executive Director's Use Determinations

Dear Ms. Castañuela:

Enclosed for filing, please find an original and 7 copies of the *"Executive Director's Response Brief to Rusk County, Freestone Central, Hutchinson County, Fort Bend Central, Brazoria County, and Wharton County Appraisal Districts' Appeals of the Executive Director's Negative Use Determinations."*

Please file-stamp these documents and return one copy to D. A. Chris Ekoh, Staff Attorney, Environmental Law Division, MC 173. If you have any questions, please do not hesitate to contact me at (512) 239-5487.

Sincerely,

D. A. Chris Ekoh, Staff Attorney
Environmental Law Division

EXHIBIT 6

TCEQ Docket Numbers
2008-0830-MIS-U (UD 07-11914/Tenaska Gateway Partners, Ltd – Rusk County)
2008-0831-MIS-U (UD 07-11966/Freestone Power Generation, L.P. – Freestone County)
2008-0832-MIS-U (UD 07-11971/Borger Energy Associates, LP – Hutchinson County)
2008-0849-MIS-U (UD 07-11969/Brazos Valley Energy, L.P. – Fort Bend County)
2008-0850-MIS-U (UD 07-11994/Freeport Energy Center, L.P. – Brazoria County)
2008-0851-MIS-U (UD 07-11926/Navasota Wharton Energy Partners, LP – Wharton County)

APPEAL OF THE EXECUTIVE	**§**	**BEFORE THE**
DIRECTOR'S USE DETERMINATIONS	**§**	
ISSUED TO	**§**	
TENASKA GATEWAY PARTNERS, LTD;	**§**	
FREESTONE POWER GENERATION, L.P.;	**§**	**TEXAS COMMISSION ON**
BORGER ENERGY ASSOCIATES, LP;	**§**	
BRAZOS VALLEY ENERGY, L.P.;	**§**	
FREEPORT ENERGY CENTER, L.P.; and	**§**	
NAVASOTA WHARTON ENERGY	**§**	
PARTNERS, LP	**§**	**ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE BRIEF TO RUSK COUNTY, FREESTONE CENTRAL, HUTCHINSON COUNTY, FORT BEND CENTRAL, BRAZORIA COUNTY, AND WHARTON COUNTY APPRAISAL DISTRICTS' APPEALS OF THE EXECUTIVE DIRECTOR'S USE DETERMINATIONS

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to the Appeals of the Executive Director's Use Determinations Issued to Tenaska Gateway Partners, Ltd (Tenaska); Freestone Power Generation, L.P. (Freestone); Borger Energy Associates, LP (Borger); Brazos Valley Energy, L.P (Brazos); Freeport Energy Center, L.P (Freeport); and Navasota Wharton Energy Partners, LP (Navasota). The appeals were submitted by or on behalf of the affected county appraisal districts. The regulated entities did not appeal the Executive Director's use determinations.

For the reasons described below, the Executive Director respectfully requests that the Commission adopt the recommendation of the Executive Director and remand the respective appeals to the Executive Director to issue new determinations consistent with the Executive Director's recommendation as adopted by the Commission.

Part I of this brief presents a background of the Tax Exemption for Pollution Control Property Program, including a discussion of House Bill 3732; Part II discusses the procedural history of each application including the Executive Director's determinations; Part III describes the devices involved in these appeals, and the circumstances leading to the formation of a Workgroup to assist in establishing the method of calculating the proper pollution control percentage for the devices; and Part IV presents the Executive Director's recommendation to the Commission on the proper pollution control percentage to adopt for the devices involved in these appeals.

I.

PROGRAM BACKGROUND

These appeals of the Executive Director's use determinations are filed pursuant to H.B. 3121 (77th Tex. Legislature, 2001) establishing an appeals process for use determinations and the Commission rules implementing the legislation.[1]

In 1993, the citizens of Texas voted to adopt a tax measure called Proposition 2 (Prop 2). Prop 2 was implemented when Article 8, § 1-l was added to the Texas Constitution on November 2, 1993. The amendment allowed the legislature to "exempt from ad valorem taxation all or part of real and personal property 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."[2]

The Texas Legislature codified the constitutional amendment in 1993 as TEX. TAX CODE § 11.31 (effective January 1, 1994). The statutory language in the codified version mirrored the language of Article 8, § 1-l. The statute sets up a two-step process to obtain tax exemption for pollution control property. First, a person seeking tax exemption for pollution control property must obtain a positive use determination from the Executive Director that the property is used wholly or partly for pollution control.[3] Second, once a person obtains a positive use determination from the Executive Director, the person then applies to the appraisal district where the property is located to receive the actual tax exemption. It is the performance of this second step by the chief appraiser that removes the property from the tax roll.[4]

In 2001, the legislature amended Section 11.31 when it passed House Bill 3121 (effective September 1, 2001). This bill added several procedural requirements to Section 11.31, including a provision requiring the establishment and implementation of a process to appeal use determinations.[5] The amendment authorized the Commission to adopt rules establishing specific standards for the Executive Director to follow in making use determinations for property that qualified for either full or partial determinations.[6]

In 2007, the legislature amended Section 11.31 when it passed House Bill 3732 (effective September 1, 2007).[7] The amendment added three new subsections to Section 11.31 by requiring the:

- Commission to adopt, by rule, a list of pollution control property which must include the 18 categories of equipment outlined in HB 3732;

---

[1] See TEX. TAX CODE § 11.31 and 30 TEX. ADMIN. CODE § 17.25.
[2] TEX. CONST. art. 8, § 1-l(a) (November 2, 2002).
[3] TEX. TAX CODE § 11.31(c) & (d).
[4] TEX. TAX CODE § 11.31(i).
[5] See TEX. TAX CODE § 11.31(e).
[6] TEX. TAX CODE § 11.31(g).
[7] House Bill 3732 (80th Legislature, 2007).

- Commission to adopt a procedure to review the list at least once every three years and allows the removal of items from the list when there is compelling evidence that the item does not provide pollution control; and

- Executive Director to review applications containing only items on the adopted list, and to issue a determination without regard to the information provided in response to Section 11.31(c)(1) within 30 days of receipt of the required application documents.[8]

On January 16, 2008, the Commission adopted rules implementing HB 3732.[9] The adopted rules include the "Equipment and Categories List" (ECL).[10] Part B of the ECL consists of the 18 categories of equipment listed by the legislature in HB 3732.[11] The rules revised the review standards contained in Section 17.15 by creating a revised "Decision Flow Chart" and adopting a new "Part B Decision Flow Chart."[12] The rules created a new Tier level of application (Tier IV) for the categories of equipment contained in Part B of the ECL.[13] The use determinations subject to these appeals were filed as Tier IV applications under the newly adopted rules.

Appeals under 30 TEX. ADMIN. CODE § 17.25 may be filed by either the applicant seeking the determination, or by the chief appraiser of the tax appraisal district affected by the determination.[14] The appeal must be in writing and filed within 20 days of receipt of the use determination letter.[15] The Applicant is presumed to have received notice of the determination on the "third regular business day after the date the notice of the Executive Director's action is mailed by first class mail."[16] The appellant is required by Section 17.25(b)(5) to explain the basis for the appeal. Under Section 11.31(i), "the chief appraiser shall accept a final determination by the executive director as conclusive evidence that the facility, device, or method is used wholly or partly as pollution control property."

II.

PROCEDURAL BACKGROUND

Tenaska Gateway Partners, Ltd – Rusk County (Use Determination Number 07-11914)

On March 14, 2008, Tenaska filed a Tier IV application with the Executive Director seeking a use determination under Section 11.31 of the Texas Tax Code for 3 Heat Recovery Steam Generators (HRSG) and 1 enhanced steam turbine. Tenaska claimed the devices were installed to control Nitrogen Oxides (NO_x) and cited 40 C.F.R § 60.44Da and 30 TEX. ADMIN. CODE § 117.3010 as the rules it is meeting or exceeding by installing the devices. The application was

[8] Id. See also, 33 Tex.Reg 932, 933 (February 1, 2008).
[9] 33 Tex.Reg 932 (February 1, 2008). The rules became effective on February 7, 2008.
[10] 33 Tex.Reg at 956; and 30 TEX.ADMIN. CODE 17.14(a) (Effective February 7, 2008). Unless otherwise specifically stated, all references to 30 TAC Chapter 17 refer to the rules effective February 7, 2008.
[11] 33 Tex.Reg at 967; and 30 TEX.ADMIN. CODE 17.14(a).
[12] 30 TEX.ADMIN. CODE 17.15(a) and (b).
[13] 30 TEX.ADMIN. CODE 17.2(16).
[14] TEX. TAX CODE § 11.31(e); and 30 TEX. ADMIN. CODE § 17.25(a)(2).
[15] 30 TEX. ADMIN. CODE § 17.25(b)
[16] Id.

declared to be administratively complete on April 8, 2008. The technical review of the application was completed on May 1, 2008. On May 1, 2008, the Executive Director issued a 100% positive use determination for the HRSGs and a negative use determination for the enhanced steam turbine. Rusk County Appraisal District filed a timely appeal on May 19, 2008. On May 27, 2008, Wayne Frazell (with Pritchard & Abbott, Inc.) filed "detailed comments" on behalf of Rusk County Appraisal District, explaining its reasons for appeal. A copy of the application, administrative review documents, technical review documents, and use determination letter are attached herein as **ED's Exhibit 1**.

Freestone Power Generation L.P – Freestone County (Use Determination Number 07-11966)

On March 28, 2008, Freestone filed a Tier IV application with the Executive Director seeking a use determination under Section 11.31 of the Texas Tax Code for 4 HRSGs, 2 steam turbines, and support systems. Freestone claimed the devices were installed to control Nitrogen Oxides (NO_x) and cited 40 C.F.R § 60.44Da and 30 TEX. ADMIN. CODE § 106.512 as the rules it is meeting or exceeding by installing the devices. The application was declared to be administratively complete on April 8, 2008. The technical review of the application was completed on May 1, 2008. On May 1, 2008, the Executive Director issued a 100% positive use determination for the HRSGs and a negative use determination for the steam turbines, and support systems. Freestone Central Appraisal District filed a timely appeal on May 16, 2008. On May 27, 2008, Wayne Frazell (with Pritchard & Abbott, Inc.) filed "detailed comments" on behalf of Freestone County Appraisal District explaining the its reasons for appeal. A copy of the application, administrative review documents, technical review documents, and use determination letter are attached herein as **ED's Exhibit 2**.

Borger Energy Associates, LP – Hutchinson County (Use Determination Number 07-11971)

On March 31, 2008, Borger filed a Tier IV application with the Executive Director seeking a use determination under Section 11.31 of the Texas Tax Code for 2 HRSGs. Borger claimed the devices were installed to control Nitrogen Oxides (NO_x) and cited 40 C.F.R § 60.44Da and 30 TEX. ADMIN. CODE § 106.512 as the rules it is meeting or exceeding by installing the devices. The application was declared to be administratively complete on April 8, 2008. The technical review of the application was completed on May 1, 2008. On May 1, 2008, the Executive Director issued a 100% positive use determination for the HRSGs. Hutchinson County Appraisal District filed a timely appeal on May 16, 2008. On May 27, 2008, Wayne Frazell (with Pritchard & Abbott, Inc.) filed "detailed comments" on behalf of Hutchinson County Appraisal District explaining the its reasons for appeal. A copy of the application, administrative review documents, technical review documents, and use determination letter are attached herein as **ED's Exhibit 3**.

Brazos Valley Energy L.P – Fort Bend County (Use Determination Number 0711969)

On March 28, 2008, Brazos filed a Tier IV application with the Executive Director seeking a use determination under Section 11.31 of the Texas Tax Code for 2 HRSGs and 1 steam turbine. Brazos claimed the devices were installed to control Nitrogen Oxides (NO_x) and cited 40 C.F.R §

60.44Da and 30 TEX. ADMIN. CODE § 106.512 as the rules it is meeting or exceeding by installing the devices. The application was declared to be administratively complete on April 8, 2008. The technical review of the application was completed on May 1, 2008. On May 1, 2008, the Executive Director issued a 100% positive use determination for the HRSGs and a negative use determination for the steam turbine. Fort Bend Central Appraisal District filed a timely appeal on May 21, 2008. A copy of the application, administrative review documents, technical review documents, and use determination letter are attached herein as **ED's Exhibit 4**.

Freeport Energy Center, L.P – Brazoria County (Use Determination Number 07-11994)

On April 3, 2008, Freeport filed a Tier IV application with the Executive Director seeking a partial use determination under Section 11.31 of the Texas Tax Code for 1 HRSG, 1 steam turbine, and condenser and ancillary pump systems. Freeport claimed the devices were installed to control Nitrogen Oxides (NO_x) and cited 40 C.F.R § 60.44Da as the rule it is meeting or exceeding by installing the devices. The application was declared to be administratively complete on April 8, 2008. The technical review of the application was completed on May 1, 2008. On May 1, 2008, the Executive Director issued a 100% positive use determination for the HRSG and a negative use determination for the steam turbine, and condenser and ancillary pump systems. Brazoria County Appraisal District filed a timely appeal on May 21, 2008. A copy of the application, administrative review documents, technical review documents, and use determination letter are attached herein as **ED's Exhibit 5**.

Navasota Wharton Energy Partners, LP – Wharton County (Use Determination Number 07-11926)

On March 19, 2008, Navasota filed a Tier IV application with the Executive Director seeking a use determination under Section 11.31 of the Texas Tax Code for 4 HRSGs and 2 steam turbines. Navasota claimed the devices were installed to control Nitrogen Oxides (NO_x) and cited 40 C.F.R § 60.44Da and 30 TEX. ADMIN. CODE § 106.512 as the rules it is meeting or exceeding by installing the devices. The application was declared to be administratively complete on April 8, 2008. The technical review of the application was completed on May 1, 2008. On May 1, 2008, the Executive Director granted a 100% positive use determination for the HRSGs and a negative use determination for the steam turbines. Wharton County Appraisal District filed a timely appeal on May 21, 2008. A copy of the application, administrative review documents, technical review documents, and use determination letter are attached herein as **ED's Exhibit 6**.

III.

HRSGs and CALCULATION OF POLLUTION CONTROL PERCENTAGE

The properties involved in these appeals are HRSGs and steam turbines used at combined-cycle facilities to generate electricity. The Tier IV applications were submitted under Part B-8 of the ECL for HRSGs and Part B-10 of the ECL for steam turbines. The appeals challenge only the Executive Director's determinations granting 100% Tier IV positive use determinations for the HRSGs. The Executive Director's determinations regarding the steam turbines were not appealed.

Since the enactment of HB 3732, the Executive Director has received approximately thirty seven Tier IV use determination applications for HRSGs and steam turbines installed at combined-cycle electric generation facilities. The Executive Director has issued 100% positive use determinations for twenty six HRSGs. Six out of the twenty six use determinations were appealed by the affected appraisal districts, and all six are the subject of the instant appeals. There are currently eleven applications awaiting determinations.

Under TCEQ rules, an applicant for a Tier IV use determination is required to calculate the use determination for the equipment or categories of equipment included in the application. "It is the responsibility of the applicant to propose a reasonable method for determining the use determination percentage. It is the responsibility of the executive director to review the proposed method and make the final determination."[17] The challenge with most Tier IV applications including those involved in these appeals is the calculation of the use determination percentage for each category of equipment. A description of the functions performed by a HRSG will help explain why the calculation methodologies vary from one application to another.

A HRSG acts as a fuel substitute in a typical combined-cycle installation. A typical HRSG captures hot exhaust gases from a combustion turbine. The resulting heat is converted "into high pressure and temperature steam" which is used to propel a steam turbine to generate electrical energy.[18] This process eliminates the need for the additional burning of coal or other hydrocarbon based fuel in order to obtain the same increase in electrical energy generation output at the site. Installation of a HRSG in a combined-cycle facility "allows more electrical energy to be produced for a given heat input" compared to a "simple cycle or traditional steam boiler/turbine (Rankine cycle) configuration."[19]

Calculation Methodologies Provided in the Respective Applications:

Tenaska Gateway: Tenaska proposed a calculation based on comparing a single cycle plant with a selective catalytic reduction (SCR) system installed to control NO_x to a combined-cycle plant with an HRSG installed to boost efficiency with less NO_x emissions. Based on this premise, Tenaska claimed that it merely substituted a HRSG in a combined-cycle plant for an SCR in a single cycle plant. As a result, Tenaska wanted a use determination percentage that reflected the total capital cost of the hypothetical SCR that it did not install. The arithmetic and method of calculation is best expressed on pages 5-6 of the application.[20]

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[17] 30 TEX. ADMIN. CODE § 17.17(d).

[18] Yongjun Zhao, Hongmei Chen, Mark Waters, and Dimitri N. Mavris; "Modeling and Cost Optimization of Combined Cycle Heat Recovery Generator Systems" (Proceedings of ASME Turbo Expo 2003 - Power of Land, Sea, and Air, GT2003-38568, June 16-19, 2003). See also, Application for Use Determinations filed by Ennis-Tractebel Power Company, LP).

[19] Id. A single-cycle or simple-cycle power plant uses a "fuel-fired turbine" to generate electricity. A combined-cycle power plant combines "gas turbine engine" with a heat recovery steam generator and a steam turbine system to generate electricity. Single-cycle facilities are only able to utilize a portion of the heat that the combustion of their fuel generates. The excess heat generated from combustion is generally wasted in a single cycle facility. The HRSGs at combined-cycle facilities recapture that waste heat, and use it to make steam to generate electricity; thereby, improving overall efficiency. See Footnote 18 ("Modeling and Cost Optimization of Combined Cycle Heat Recovery Generator Systems").

[20] See ED's Exhibit 1 (Application for Tier IV use determination submitted by Tenaska Gateway Partners, Ltd.).

The problems with this calculation are as follows. First, the cost of the steam turbine which is not a pollution control property was factored into the calculation. Second, HRSGs and SCRs are totally different mechanisms. The latter is a known and acceptable pollution control device, which may still be installed somewhere in the plant to control pollution. Once installed, Tenaska can apply and receive a use determination for it. Third, SCRs are custom-built for each facility. Choosing and using an average cost, as Tenaska did, does not come close to reflecting the actual value of a SCR that would be installed if there was a need to install one. Fourth, the calculation removes the focus of the evaluation from the purported pollution control property, and places it on another unrelated property. The calculation is not based on the equipment for which use determination is sought. Finally, it is impossible to apply the review standards, particularly the Decision Flow Charts, using this calculation methodology.

Freeport Energy: Freeport requested a 98% partial use determination for replacing an old power generation plant with a combined-cycle plant using an HRSG. Freeport based its proposed calculation on the NO_x reduction achieved by the new plant. Freeport claimed that NO_x emissions were reduced from 147ppm (old plant) to 3ppm (new plant). The partial percentage calculation based on reduction in NO_x emissions was 98% of the total cost of installation of the HRSG, steam turbine, and condenser and ancillary pump system. The method of calculation is best expressed on pages 5-6 of the application.[21]

The problems with this calculation are as follows. First, the cost of the steam turbine, condenser and ancillary pump system which are not pollution control properties are factored into the calculation. Second, the calculation removes the focus of the evaluation from the purported pollution control equipment, and places it on NO_x emissions. The calculation is not based on the equipment for which use determination is sought. Third, the calculation is based on the cost of the entire facility rather than the cost of the HRSG. Finally, it is impossible to apply the review standards, particularly the Decision Flow Charts, using this calculation methodology.

Freestone Power Generation: Freestone proposed a use determination percentage calculation based on "avoided emissions." This "approach relies on thermal output differences between a conventional power generation system and the combined-cycle system."[22] This approach "utilized output-based NO_x allocation method for both power generation projects."[23] The method of calculation is best expressed on Schedule A, and pages 11-12 of the application.[24]

The problems with this calculation are as follows. First, the cost of the entire facility was used in the calculation. Second, the cost of the steam turbines and supporting systems which are not pollution control properties are factored into the calculation. Third, the calculation removes the focus of the evaluation from the purported pollution control property and places it on NO_x emissions output. The calculation is not based on the devices for which use determinations are sought. Fourth, the calculation is based on several assumptions, none of which reflect the pollution control properties at issue in this case. Finally, it is impossible to apply the review

[21] See ED's Exhibit 5 (Application for Tier IV use determination submitted by Freeport Energy Center, L.P.).
[22] See ED's Exhibit 2 (Application for Tier IV use determination submitted by Freestone Power Generation, L.P.).
[23] Id.
[24] Id.

standards, particularly the Decision Flow Charts, using this calculation methodology. Finally, as a result of the flawed assumptions, the use of the total cost of the facility, and the use of the total cost of the HRSGs and steam turbines, the applicant came up with a pollution control percentage of 384%.

Borger Energy: Like Freestone, Borger proposed a use determination percentage calculation based on "avoided emissions." This "approach relies on thermal output differences between a conventional power generation system and the combined-cycle system." [25] The approach "utilized output-based NO_x allocation method for both power generation projects."[26] The method of calculation is best expressed on Schedule A, and pages 7-9 of the application.[27]

The problems with this calculation are as follows. First, the cost of the entire facility was used in the calculation. Second, the calculation removes the focus of the evaluation from the purported pollution control properties and places it on NO_x emissions output. The calculation is not based on the devices for which use determinations are sought. Third, the calculation is based on several assumptions, none of which reflect the pollution control properties at issue in this case. Fourth, it is impossible to apply the review standards, particularly the Decision Flow Charts, using this calculation methodology. Finally, as a result of the flawed assumptions and the use of the total cost of the facility, the applicant came up with a pollution control percentage of 128.6%.

Brazos Valley Energy: Brazos proposed a pollution control percentage calculation based on "avoided emissions." This "approach relies on thermal output differences between a conventional power generation system and the combined-cycle system." [28] The approach "utilized output-based NOx allocation method for both power generation projects."[29] The method of calculation is best expressed on Schedule A, and pages 9-10 of the application.[30]

The problems with this calculation are as follows. First, the cost of the entire facility was used in the calculation. Second, the cost of the steam turbines and supporting systems which are not pollution control devices are factored into the calculation. Third, the calculation removes the focus of the evaluation from the purported pollution control properties and places it on NOx emissions output. The calculation is not based on the devices for which use determinations are sought. Fourth, the calculation is based on several assumptions, none of which reflects the pollution control properties at issue in this case. Fifth, it is impossible to apply the review standards, particularly the Decision Flow Charts, using this calculation methodology. Finally, as a result of the flawed assumptions, the use of the total cost of the facility, and the use of the total cost of the HRSGs and steam turbine, the applicant came up with a pollution control percentage of 248.7%.

Navasota Energy: Navasota proposed a pollution control percentage calculation based on "avoided emissions." This "approach relies on thermal output differences between a

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[25] See ED's Exhibit 3 (Application for Tier IV use determination submitted by Borger Energy Associates, LP.).
[26] Id.
[27] Id.
[28] See ED's Exhibit 4 (Application for Tier IV use determination submitted by Brazos Valley Energy, L.P.).
[29] Id.
[30] Id.

conventional power generation system and the combined-cycle system." [31] The approach "utilized output-based NO_x allocation method for both power generation projects."[32] The method of calculation is best expressed on Schedule A, and pages 9-10 of the application.[33]

The problems with this calculation are as follows. First, the cost of the entire facility was used in the calculation. Second, the cost of the steam turbines and supporting systems which are not pollution control devices are factored into the calculation. Third, the calculation removes the focus of the evaluation from the purported pollution control properties and places it on NO_x emissions output. The calculation is not based on the devices for which use determinations are sought. Fourth, the calculation is based on several assumptions, none of which reflects the pollution control properties at issue in this case. Fifth, it is impossible to apply the review standards, particularly the Decision Flow Charts, using this calculation methodology. Finally, as a result of the flawed assumptions, the use of the total cost of the facility, and the use of the total cost of the HRSGs and steam turbine, the applicant came up with a pollution control percentage of 164%.

The pollution control percentages and the methods of calculation used by the applicants vary considerably. The following are examples of the percentages derived by using the avoided emissions calculation:

Applicant	Calculation Method	Pollution Control %
Channel Energy	Avoided emission based on No_x Output	366.1%
Pasadena Cogeneration	Avoided emission based on No_x Output	165%
TH Wharton	Avoided emission based on No_x Output	398.3%
Cedar Bayou 4	Avoided emission based on No_x Output	225.9%
Mustang Units 1, 2, &3	Avoided emission based on No_x Output	142.18%
Calpine Baytown	Avoided emission based on No_x Output	298.75%
Deer Park Energy	Avoided emission based on No_x Output	503.55%
Magic Valley	Avoided emission based on No_x Output	263.55%
FPL Forney	Avoided emission based on No_x Output	213.64%

Based on various calculations and initial research by staff, the Executive Director allowed 100% positive use determination for the first set of applications adjudicated. Subsequently, the Executive Director received new applications, with varying use determination percentages. The Executive Director then decided to develop a consistent and uniform use determination percentage for HRSGs.

[31] See ED's Exhibit 6 (Application for Tier IV use determination submitted by Navasota Wharton Energy Partners, LP.).
[32] Id.
[33] Id.

IV.

THE WORKGROUP AND EXECUTIVE DIRECTOR'S RECOMMENDATION

Faced with the difficulties of coming up with a reasonable use determination percentage for HRSGs, the Executive Director assembled a Workgroup to gather information that would lead to the development of a uniform use determination percentage for the equipment. The Workgroup was attended by applicants or their representatives whose use determinations are currently pending on appeal; applicants or their representatives whose use determination applications are currently pending in-house; appraisal districts and their representatives; and environmental and public interest groups. The Workgroup met twice and provided input to the Executive Director on this issue. Based on staff research and input from the Workgroup, the following conclusions were made:

1. A comparable combined cycle power plant produces less air emissions than the same size simple cycle power plant. The reduced emissions are attributed to reduced combustion. The installation of the HRSGs lead to the reduced emissions.

2. The steam turbine systems are used solely to produce electricity. As 100% production equipment the steam turbine systems are not eligible for a positive use determination.

3. The pollution control aspect of the combined cycle plant relates solely to the installation of the HRSGs. However, installation of HRSG also results in increased efficiency and production gain.

The Executive Director reviewed several calculation methodologies provided in different applications and at the Workgroup meetings; calculations provided by Wayne Frazell, with Pritchard & Abbott; and comments and suggestions made by Workgroup participants. The goal was to assign an appropriate percentage to the pollution control aspect of the HRSGs, while taking into account the production gain associated with their installation. Of all the calculations reviewed, the method furnished by Cummings Westlake, LLC, representing Ennis-Tractebel Power Company, comes the closest to providing the appropriate use determination percentage for HRSGs.

The Executive Director is therefore recommending the following modified version of the calculation presented by Cummings Westlake:

> A HRSG acts as a fuel substitute in a combined cycle installation. A typical HRSG captures hot exhaust gases from a combustion turbine. The resulting heat is converted "into high pressure and temperature steam" which is used to propel a steam turbine to generate electrical energy.[34] This process eliminates the need for the additional burning of coal or other hydrocarbon based fuel in order to obtain

[34] Yongjun Zhao, Hongmei Chen, Mark Waters, and Dimitri N. Mavris; "Modeling and Cost Optimization of Combined Cycle Heat Recovery Generator Systems" (Proceedings of ASME Turbo Expo 2003 - Power of Land, Sea, and Air, GT2003-38568, June 16-19, 2003). See also, Application for Use Determinations filed by Ennis-Tractebel Power Company, LP).

> the same increase in electrical energy generation output at the site. Installation of a HRSG in a combined cycle facility "allows more electrical energy to be produced for a given heat input" compared to a "simple cycle or traditional steam boiler/turbine (Rankine cycle) configuration."[35] The thermal efficiency increase or production gain derived from the installation of a HRSG is approximately 39%. Since this percentage represents the additional amount of electrical energy produced for a given heat input, it therefore represents the production value of the equipment. Based on this production value, the pollution control percentage of a HRSG installed at a combined-cycle facility is 61%. **Staff is therefore recommending a positive use determination of 61% for the installation of a HRSG in a combined cycle facility.**

Under this method, a HRSG would exit the "Decision Flow Chart" at box 7 and requires the application of "Part B Decision Flow Chart."[36] HRSG provides environmental benefit at the site under box 2 of the Part B Decision Flow Chart by acting as fuel substitute, capturing exhaust gases which would have been emitted into the air at the site, and eliminates the need for the additional burning of hydrocarbon-based fuel to obtain the same increase in electrical energy generation at the site. The HRSGs involved in the instant appeals were installed in order to meet or exceed an environmental rule adopted to control NO_x emissions.[37]

V.

CONCLUSION

The Executive Director requests that the Commission adopt the recommendation of the Executive Director on the proper pollution control percentage for HRSGs installed at combined-cycle facilities. Should the Commission choose to adopt the Executive Director's recommendation, the Executive Director intends to apply the adopted recommendation to all subsequently filed similar use determination applications, and to those applications currently pending adjudication.

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[35] Id.
[36] 30 TEX. ADMIN. CODE § 17.15(a); and 30 TEX. ADMIN. CODE § 17.15(b).
[37] See 40 C.F.R § 60.44Da; and 30 TEX. ADMIN. CODE § 106.512.

The Executive Director respectfully requests that the Commission remand use determination numbers 07-1194, 07-11966, 07-11971, 07-11969, 07-11994, and 07-11926, to the Executive Director to issue revised use determinations consistent with the adopted recommendation.

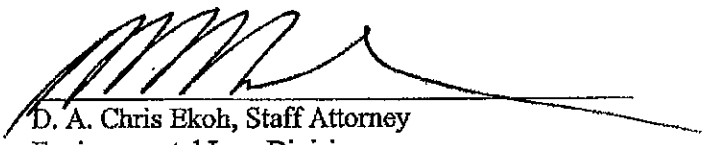
Respectfully submitted,

TEXAS COMMISSION ON ENVIRONMENTAL QUALAITY

Mark R. Vickery, P.G., Executive Director

Stephanie Bergeron Perdue,
Deputy Director Office of Legal Services

Robert Martinez, Director
Environmental Law Division



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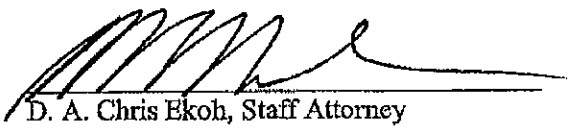
CERTIFICATE OF SERVICE

I certify that on December 3, 2008, the original and 7 copies of the Executive Director's Response to Rusk County, Freestone Central, Hutchinson County, Fort Bend Central, Brazoria County, and Wharton County Appraisal Districts' Appeals of the Executive Director's use determinations was filed with the Office of the Chief Clerk, Texas Commission on Environmental Quality, and was served by first-class mail, agency mail, or facsimile to all persons on the attached mailing list.



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Texas Commission on Environmental Quality

MAILING LIST
TCEQ Docket Numbers
2008-0830-MIS-U (UD 07-11914/Tenaska Gateway Partners, Ltd – Rusk County)
2008-0831-MIS-U (UD 07-11966/Freestone Power Generation, L.P. – Freestone County)
2008-0832-MIS-U (UD 07-11971/Borger Energy Associates, LP – Hutchinson County)
2008-0849-MIS-U (UD 07-11969/Brazos Valley Energy, L.P. – Fort Bend County)
2008-0850-MIS-U (UD 07-11994/Freeport Energy Center, L.P. – Brazoria County)
2008-0851-MIS-U (UD 07-11926/Navasota Wharton Energy Partners, LP – Wharton County)

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Executive Director's Exhibit 1

Tenaska: Application and Use Determination Documents

829091 RECEIVED

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

2008 MAY 23 AM 8:43

CHIEF CLERKS OFFICE

The TCEQ has the responsibility to determine whether a property is a pollution control property. A person seeking a use determination must complete the attached application or 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 Tax Relief for Pollution Control Property Program at (512) 239-3100. The application should be completed and mailed, along with a complete copy and the appropriate fee, to: TCEQ MC-214, Cashiers Office, PO Box 13088, Austin, Texas 78711-3088.

Information must be provided for each field unless otherwise noted.

1. GENERAL INFORMATION

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

- ☐ Corporation
- ☐ Partnership
- ☒ Limited Partnership
- ☐ Sole Proprietor
- ☐ Utility
- ☐ Other:

B. Size of company: Number of Employees

- ☒ 1 to 99
- ☐ 100 to 499
- ☐ 500 to 999
- ☐ 1,000 to 1,999
- ☐ 2,000 to 4,999
- ☐ 5,000 or more

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

Electric Generation

2. TYPE OF APPLICATION

- ☐ Tier I $150 Fee
- ☐ Tier II $1,000 Fee
- ☐ Tier III $2,500 Fee
- ☒ Tier IV $500 Fee

NOTE: Enclose a check, money order to the TCEQ, or a copy of the ePay receipt along with the application to cover the required fee.

3. NAME OF APPLICANT

A. Company Name:	Tenaska Gateway Partners, Ltd.
B. Mailing Address (Street or P.O. Box):	1044 N. 115 Street, Suite 400
C. City, State, and Zip	Omaha, NE 68154-4446

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

A. Name of Facility or Unit:	Tenaska Gateway Generating Station
B. Type of Mfg. Process or Service:	Natural Gas- Fueled, Combined-Cycle Generation
C. Street Address:	SH 315
D. City, State, and Zip:	Mt. Enterprise, Texas 75681-0697
E. Tracking Number *(Optional)*:	GATEWAY-2008-1
F. Company or Registration Number *(Optional)*:	

5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY

A. Name of Appraisal District:	Rusk County Appraisal District
B. Appraisal District Account Number:	

6. CONTACT NAME

A. Company/Organization Name	Tenaska, Inc.
B. Name of Individual to Contact:	David D. Johnson
C. Mailing Address (Street or P.O. Box):	1044 N. 115 Street, Suite 400
D. City, State, and Zip:	Omaha, NE 68154-4446
E. Telephone number and fax number:	Tel:(402)691-9533 Fax:(402) 691-9552
F. E-Mail address (if available):	

7. RELEVANT RULE, REGULATION, OR STATUTORY PROVISION
For each media, please list the specific environmental rule or regulation that is met or exceeded by the installation of this property.

MEDIUM	Rule/Regulation/Law
Air	Title 40 of the Code of Federal Regulations, Chapter I, Subchapter C, Part 60, Subpart D, Section 60.44a ("40 CFR 60.44Da") Title 30 of the Texas Administrative Code, Part 1, Chapter 117,Subchapter E, Division 1, Rule 117.3010 ("30 TAC 117.3010")
Water	
Waste	

8. DESCRIPTION OF PROPERTY (Complete for all applications)
Describe the property and how it will be used at your facility. Do not simply repeat the **description from the Equipment & Categories List.** Include sketches of the equipment and flow diagrams of the processes where appropriate. Use additional sheets, if necessary.

Heat Recovery Steam Generators and Enhanced Steam Turbine
Tier IV

Statutes and Regulations

40 CFR 60.44Da establishes standards of performance for NOx for electric utility steam generating units for which construction commenced after September 18, 1978. 30 TAC 117.3010 establishes emissions specifications for NOx for utility electric generation in East and Central Texas, which includes Rusk County.

Property/Equipment Description

The Tenaska Gateway Generating Station (the Plant) is an 845 MW (nominal net capacity) natural gas-fueled, combined-cycle electric generating station. The Plant is a combined-cycle facility including three 170 Megawatt (MW) combustion turbine generators coupled with three thermally efficient heat recovery steam generators (HRSGs) and a single 335 MW steam turbine.

A combined cycle facility consists of one or more gas and steam turbines. The air expansion that occurs during the combustion process turns the gas turbine that drives the generator to produce electricity. The combustion in the gas turbine also produces a hot exhaust gas. In a combined cycle unit the heat produced during the combustion of natural gas is directed to the HRSG to generate steam used to turn a steam turbine. Therefore, both the gas and steam turbines generate electricity, achieving efficiencies of up to 55%. [1]

[1] Bay Area 2005 Ozone Strategy
[2] EPA-452/F-03-022

A simple-cycle plant contains gas turbines without HRSGs or steam turbines. The air expansion that occurs during the combustion process turns the turbine that drives the generator to produce electricity and produces a hot exhaust gas.

One of the benefits of a combined cycle facility is lower NOx emissions per Megawatt-hour (MWh) generated. Assuming the same MWh production, a NOx pollution control device would have to be installed at simple cycle facility to achieve the lower NOx emissions achieved by a combined cycle process. NOx pollution control devices include selective catalytic reduction systems (SCR). A SCR unit reduces NOx emissions by injecting ammonia into the exhaust stream to react with the nitrous oxides to form nitrogen and water under the presence of a catalyst. The chemical reaction proceeds as follows:

$6\,NO_2 + 8\,NH_3 \rightarrow 7\,N_2 + 12\,H_2O$

The SCR unit consists of a catalytic honeycomb structure installed downstream of the combustion turbine prior the main exhaust stack and an ammonia injection skid. For the large 7FA GE turbines, the SCR installed capital costs range from $2,000,000 to $4,500,000 per gas turbine. [1, 2] Based on the literature review, catalyst cost escalation since the publication of the literature, and the physical location of the plant (Rusk County), $4,000,000 per turbine is the estimated cost to install a SCR unit at the Tenaska Gateway Plant.

In the combined-cycle configuration specific to the Plant, the HRSGs and the enhanced steam turbine provide an additional 335 MW capacity without the installation of SCR units to meet the NOx emissions requirements on a lbs-NOx per MW-hour generation basis. The total installed costs of the HRSGs and enhanced steam turbine is $48,038,345.

Comparing the NOx emissions on a MWh basis shows that a simple cycle configuration would yield approximately 66% more NOx. The calculations are demonstrated by the following:

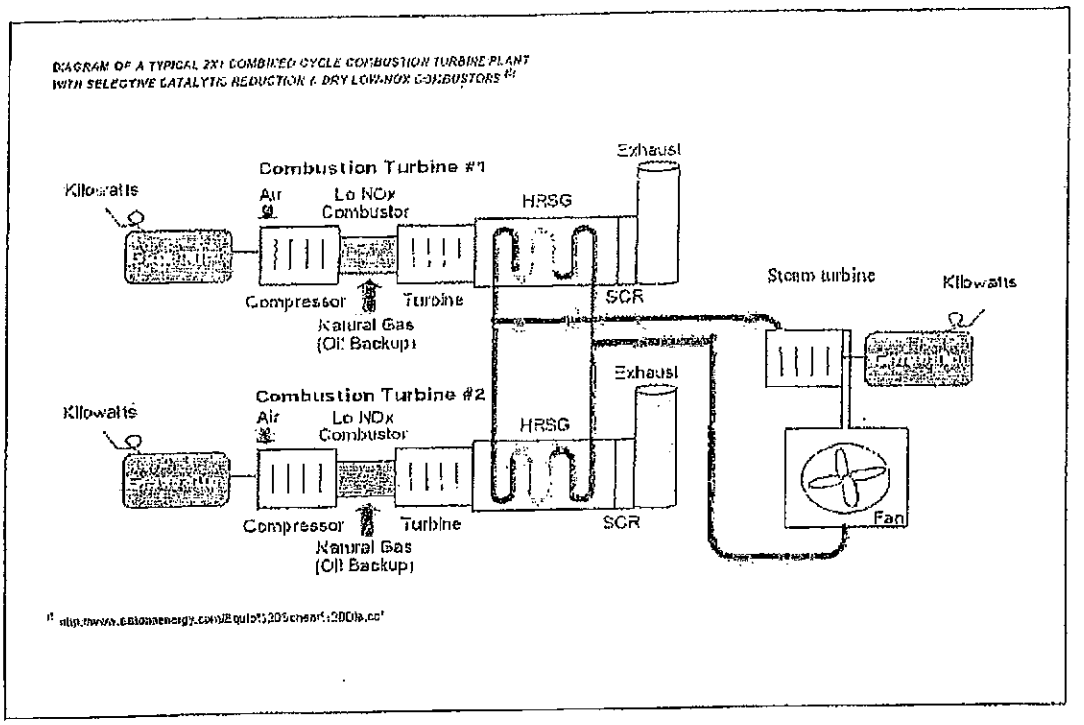
Configuration	MW	Capacity Factor	Calculated MW	Increased NOx Emissions
Combined Cycle	845	1.00	=845	
Simple Cycle	510	1.66	=845	66%

To achieve the reduced NOx emissions demonstrated by the combined cycle configuration, the simple cycle plant must install a SCR. Recognizing that the heat recovery steam generators and subsequent enhanced steam turbines have an economic benefit associated with them, the basis of this application is predicated on a substitution basis. If Tenaska did not install the additional heat recovery equipment, they would have had to install NOx pollution control devices in addition to the existing low NOx burner currently installed. The hypothetical installation of SCR units on each gas turbine would achieve the corresponding NOx emissions reductions. Therefore, this application seeks only the equivalent SCR cost for the exemption value of the HRSG and enhanced steam turbines.

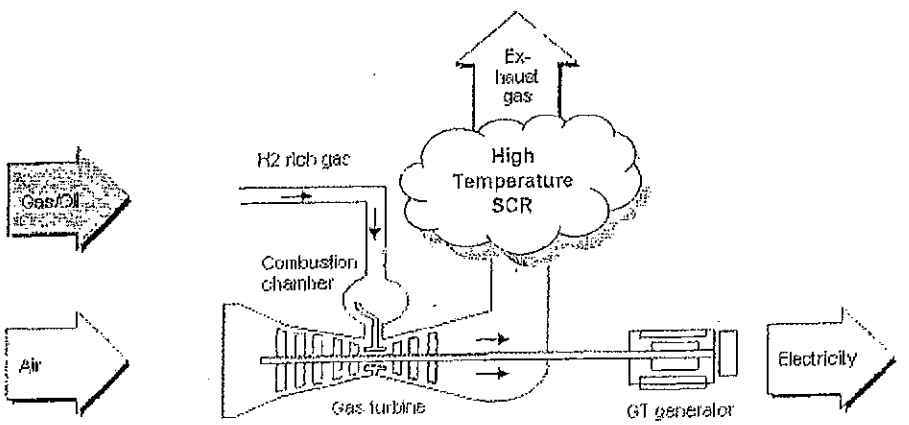
Tenaska Gateway Tier IV Methodology

	Generation / Emission Technology	
	HRSG / Steam Turbine	SCR Technology
HRSG Cost	$34,640,309	-
Enhanced Steam Turbine	13,398,037	-
SCR Equivalent Cost	-	12,000,000
Total Capital Costs	$48,038,346	$12,000,000
Exemption %	25%	100%

The following diagram depicts a normal combined cycle configuration with low NOx combustion system and an SCR controlling the NOx emissions. This diagram is shown to show the normal configuration of a SCR installation.



The following diagram depicts a simple cycle power plant with a hypothetical high temperature SCR installed at the heat exhaust point of the simple cycle gas turbines.



9. PARTIAL PERCENTAGE CALCULATION

This section is to be completed for Tier III and IV applications. For information on how to conduct the partial percentage calculation, see the application instructions document. Attach calculation documents to completed application.

10. PROPERTY CATEGORIES AND COSTS

List each control device or system for which a use determination is being sought. Provide additional attachments for more than 3 properties.

Property	Taxable on 1/01/94?	DFC Box	ECL #	Estimated Cost	Use %
Land					
Property Heat Recovery Steam Generators / Enhanced Steam Turbine	No	B,3	B-8 / B-9	$48,038,346	25%
Totals				$48,038,346	25%

$12 009 587

11. EMISSION REDUCTION INCENTIVE GRANT

(For more information about these grants, see the Application Instruction document).

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

☐ Yes ☒ No

12. 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.

13. FORMAL REQUEST FOR SIGNATURE

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

Name: Jerry K. C Date: 3/17/08

Title: Chief Financial Officer of

Company: Tenaska VII, Inc. General Partner of Tenaska VII Partners, L.P. Managing General Partner

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.

14. DELINQUENT FEE/PENALTY PROTOCOL

This form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol. (Effective September 1, 2006)

Tax Relief for Pollution Control Property

Application Form – Effective January 2008

DISCLAIMER

This document is intended to assist persons in applying for a use determination, pursuant to Title 30 Texas Administrative Code Chapter 17 (30 TAC 17). Conformance with these guidelines is expected to result in applications that meet the regulatory standards required by the Texas Commission on Environmental Quality (TCEQ). However, the TCEQ will not in all cases limit its approval of applications to those that correspond with the guidelines in this document. These guidelines are not regulation and should not be used as such. Personnel should exercise discretion in using this guidelines document. It should be used along with other relevant information when developing an application.

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 14, 2008

CHIEF APPRAISER
RUSK COUNTY APPRAISAL DISTRICT
PO BOX 7
HENDERSON TX 75653

This letter is to inform you that a Use Determination Application has been filed by:

TENSKA GATEWAY PARTNERS LTD

for:

TENASKA GATEWAY GENERATION STATION
SH 315, PO BOX 697
MOUNT ENTERPRISE TX 75681-0697

Appraisal District Account Number: NOT LISTED

This facility is located in RUSK County.

A complete copy of the application is included with this letter. We recommend that a copy of this application be shared with the person who conducts the appraisal of this property.

This application has been assigned a tracking number of 07 -11914. Please contact the Tax Relief for Pollution Control Property Program at (512) 239-3100 if you have any questions.

Sincerely,

Ron Hatlett
Tax Relief for Pollution Control Property Program

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 8, 2008

TENASKA INC
DAVID D JOHNSON
1044 N 115 ST #400
OMAHA NE 68154 -4446

This letter is to inform you that on 4/8/2008, Use Determination Application, 07-11914 (self assigned tracking number GATEWAY-2008-1), was declared to be administratively complete. This application was filed for the following facility:

TENASKA GATEWAY GENERATION STATION
SH 315, PO BOX 697
MOUNT ENTERPRISE TX 75681 0697

The next step in the Use Determination Application process is the technical review of the application. If this is a Tier I, II, or III application the technical review will be completed within sixty days of the administrative complete date. If this is a Tier IV application the technical review will be completed within 30 days of the administrative complete date. If additional technical information is required a notice of deficiency letter (NOD) will be issued. The time period between the issuance of the NOD and the receipt of the response is not counted in determinating the length of the technical review .The TCEQ will notify you after the technical review has been completed. In accordance with the statute, the TCEQ has mailed a notice of receipt of this Use Determination Application to the RUSK County Appraisal District. Please contact the Tax Relief for Pollution Control Property Program at (512) 239-3100 if you have any questions.

Sincerely,

Ron Hatlett
Tax Relief for Pollution Control Property Program

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 1, 2008

CHIEF APPRAISER
RUSK COUNTY APPRAISAL DISTRICT
PO BOX 7
HENDERSON, TX 75653

This letter is to inform you that on 5/1/2008, a final determination was issued with regard to Use Determination application 07-11914, filed by:

TENASKA GATEWAY PARTNERS LTD
TENASKA GATEWAY GENERATION STATION
SH 315, PO BOX 697
MOUNT ENTERPRISE, TX 75681

A copy of the use determination is included with this letter. 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.

In order to qualify for a tax exemption, the applicant must file an exemption request with your appraisal district. This exemption request must be accompanied by a copy of the positive use determination issued by the TCEQ. If you have any questions regarding this Use Determination or the appeals process, please call me at 512/239-3100.

Sincerely,

David Greer
Team Leader, Pollution Prevention

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 1, 2008

TENASKA INC
DAVID D JOHNSON
1044 N 115 ST #400
OMAHA, NE 68154 4446

This letter is to inform you that on 5/1/2008, the technical review of Use Determination Application 07-11914 was completed. This application is for:

TENASKA GATEWAY PARTNERS LTD
TENASKA GATEWAY GENERATION STATION
SH 315, PO BOX 697
MOUNT ENTERPRISE, TX 75681 0697

The use determination is included with this letter. In order to request an exemption, a copy of this Use Determination, along with a completed exemption request form #50-248 (can be found at www.cpa.state.tx.us), must be provided to the Chief Appraiser of the appropriate appraisal district. This request must be made by April 30.

House Bill 3121, enacted during the 77th Legislative 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 Tax Relief for Pollution Control Property Program at (512) 239-3100.

Sincerely,

David Greer
Team Leader, Pollution Prevention

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11914, filed by:

TENSKA GATEWAY PARTNERS LTD
TENASKA GATEWAY GENERATION STATION
SH 315, PO BOX 697
MOUNT ENTERPRISE TX 75681

The pollution control property/project listed in the Use Determination Application is:

This facility has three combustion turbine generators coupled with three thermally efficient heat recovery steam generators (HRSGs) and one enhanced steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the three Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Executive Director

May 1 2009
Date

TAX RELIEF FOR POLLUTION CONTROL PROPERTY: TECHNICAL REVIEW DOCUMENT

Reviewed By: RLH App. No.: 07 - 11914 Review Start Date: 4/8/2008

Company Name: TENSKA GATEWAY PARTNERS LTD
Facility Name: TENASKA GATEWAY GENERATION STATION
County: RUSK Outstanding Fees: N
Batch/Voucher Number:B99788

ADMINISTRATIVE REVIEW

Administrative Complete Date:4/8/2008

TIER LEVEL
What Tier is this application? The application was filed as a Tier IV application. Is this the appropriate level?

The property listed on this application, Heat Recovery Steam Generators and a steam turbine are items B8 and B10 on the Equipment and Categories List. This application was filed as a Tier IV. Tier IV is the appropriate level for this application.

RELEVANT RULE, REGULATION, OR STATUTORY PROVISION
The rule listed in the application is: 40 CFR 60.44Da
The appropriate rule is: 40 CFR 60.44Da

Explain why this is the appropriate rule?

40 CFR 60.Subpart DA: Standards of Performance for New Stationary Sources. Standards of performance for Electric Utility Steam Generating Units for Which Construction is Commenced after September 18, 1978. This is an appropriate rule.

BRIEF DESCRIPTION OF PROPERTY
The property is described as:

This facility has three combustion turbine generators coupled with three thermally efficient heat recovery steam generators (HRSGs). This application is a Tier IV application seeking a partial use determination for the three HRSGs and the enhanced steam turbines. To generate the equivalent amount of power using combustion turbine they would have needed to install a Selective Catalytic Reduction System.The application requests a partial determination.

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?

An adequate description of the property was provided. and the purpose of the property was listed. The anticipated environmental benefit is listed. Sketches and flow diagrams were provided.

DECISION FLOWCHART(30 TAC 17.15(a))
Mark the appropriate boxes: Box 3 Box 5 Box 6(IV) Y Box 10(III) Box 12(I) Box 13(II)
PART B DECISION FLOWCHART (17.15(b))
Mark the appropriate boxes: Box 1Y Box 2 Y Box 3 Y

Describe how the property flowed through the Decision Flowchart:

The Heat Recovery Steam Generators (HRSGs) are listed on Part B of the Equipment &

Categories List as item B-8. As Part B equipment the HRSGs leave the Decision Flow Chart at Box 6 and pass through Box 1 of the Part B Decision Flow Chart with a yes answer. Since the use of HRSGs provide an environmental benefit of reduced NOx emissions at the site there is a yes answer for Box 2. Since there is a reduction in NOx emissions there is an environmental rule which is being met, so there is a yes answer to Box 3. The steam turbine passes through Box 1 on the Part B Decision Flow Chart with a yes answer. Since the use of the steam turbine does not provide an environmental benefit at the site a no answer is the result of Box 2. The steam turbine is not eligible for a positive determination.

TIER III or IV APPLICATIONS

Does your calculation agree with the applicants?

No. The application contains a proposed formula for calculating the pollution control value of the HRSGs and the steam turbine. The formula is outcome determinative, and its focus is not on the pollution control aspect of the property. The Executive Director disagrees with this formula.

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.

The table was completed correctly. The applicant certified that all listed property became taxable for the first time after January 1, 1994. All the information necessary for conducting the technical review was included on the application.

TECHNICAL DEFICIENCIES

Is the application complete as received: Y If the application was not administratively complete explain below when justifying the final decision in the final determination section. If the application was not technically complete then:

Provide the language to be used in the Notice of Deficiency (NOD) letter:

Summarize the NOD response:

Provide the language used in the second NOD letter:

Summarize the second NOD response:

Provide the language used in the thied NOD letter:

Summarize the third NOD response:

FINAL DETERMINATION

If the property description has been summarized enter the detailed property description:

This facility has three combustion turbine generators coupled with three thermally efficient heat recovery steam generators (HRSGs). This application is a Tier IV application seeking a partial use determination for the three HRSGs and the enhanced steam turbines. To generate the equivalent amount of power using combustion turbine they would have needed to install a Selective Catalytic Reduction System.The application requests a partial determination.

Provide the reason for your final determination:

The Heat Recovery Steam Generators meet all of the requirements of Chapter 17. A positive use determination based on the most appropriate formula should be issued for the Heat Recovery Steam Generators. The most appropriate formula has been determined by the Executive Director. A negative determination should be issued for the steam turbine. The use of the steam turbine does not result in there being an environmental benefit at the site.

Provide the language for the final determination.

A positive use determination of 100% for the three Heat Recovery Steam Generators. A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Highlight the required signatures and establish the appropriate due dates.

Reviewed: Ronald Hatchett **Date Signed:** 5/1/2008

Peer Reviewed: Kevin McArthur **Date Signed:** 5/1/2008

Team Leader: [signature] **Date Signed:** 5/1/08

Section Manager: [signature] **Date Signed:** MAY 1 2008

Division Director: [signature] **Date Signed:** MAY 1 2008

Executive Director's Exhibit 2

Freestone: Application and Use Determination Documents

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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

2008 MAY 23 AM 8:43

CHIEF CLERKS OFFICE

The TCEQ has the responsibility to determine whether a property is a pollution control property. A person 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 Tax Relief for Pollution Control Property Program at (512) 239-3100. The application should be completed and mailed, along with a complete copy and 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
- ☐ 1,000 to 1,999
- ☐ 100 to 499
- ☐ 2,000 to 4,999
- ☐ 500 to 999
- ☐ 5,000 or more

C. Business Description: **Electric Power Generation**

2. TYPE OF APPLICATION

- ☐ **Tier I $150 Application Fee**
- ☐ **Tier III $2,500 Application Fee**
- ☐ **Tier II $1,000 Application Fee**
- ☑ **Tier IV $500 Application Fee**

NOTE: Enclose a check, money order to the TCEQ, or a copy of the ePay receipt along with the applicaton to cover the required fee.

3. NAME OF APPLICANT

A. Company Name: Freestone Power Generation L.P.

B. Mailing Address (Street or P.O. Box): 717 Texas, Ste. 1000

C. City, State, ZIP: Houston, TX 77002

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

A. Name of facility: Freestone Energy Center

B. Type of Mfg Process or Service: Electric Power Generation

C. Street Address: 13.6 mi north on FM 488 from Fairfield.

D. City, State, ZIP: Fairfield, Texas 75840

E. Tracking Number Assigned by Applicant: DPFreestone B

F. Customer Number or Regulated Entity Number: N/A

5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY

A. Name of Appraisal District: Freestone

B. Appraisal District Account Number: M-0012170-9900015; M-0012170-9900010;

07-11966

6. CONTACT NAME (must be provided)

A. Company/Organization Name:	Duff and Phelps LLC
B. Name of Individual to Contact:	Greg Maxim
C. Mailing Address:	919 Congress Ave. Suite 1450
D. City, State, ZIP:	Austin, TX 78701
E. Telephone number and fax number:	(512) 671-5580 Fax (512) 671-5501
F. E-Mail address (if available):	gregory.maxim@duffandphelps.com

7. RELEVANT RULE, REGULATION, OR STATUTORY PROVISION

Please reference Section 8. Each item is detailed with the proper statute, regulation, or environmental regulatory provision.

8. DESCRIPTION OF PROPERTY

Background

The Freestone Energy Center ("the Project") is a nominally 1050 MW merchant power plant that is situated on a 63-acre site that is a portion of approximately 550 acres owned by Calpine in north central Texas, approximately 80 miles south of Dallas.

The primary equipment for the facility consists of four combustion turbine generators (CTGs), four heat recovery steam generators (HRSGs), and two steam turbine generators (STGs) (a "4~4x2" configuration). The equipment is configured into two largely independent power blocks, each consisting of 2 CTGs, 2 HRSGs, and 1 STG (thus, two 2x2~1 configurations).

The CTGs are General Electric model 7FAs. The CTGs are designed to compress air, mix and ignite the air with pipeline quality natural gas, expand the hot gas through a power turbine, and exhaust into the HRSGs. The combustion turbines utilize a proven Dry Low NOx (DLN) combustion system which will meet the permit requirement of 9 ppmvd @ 15% 02. The CTGs are also equipped with inlet fogging, which improves emissions of the turbine by cooling the inlet air.

The combustion turbines have been equipped with several devices and enhancements that further refine the airflow through the combustion path. By reducing the airflow through the combustors as load is reduced, the air to fuel ratio is maintained for proper combustion. These devices and enhancements do not affect the overall full load output of the combustion turbines. The General Electric 7FAs installed at Freestone incorporate the following:

1. The combustion system is a Dry low NOx (DLN-2.6) system designed to lower the NOx emissions to a level less than 9ppm or lower and also reduce CO to levels less than 15ppm or lower, as the primary emissions control mechanism. This is the latest development in GE low emissions combustion technology. It is a can-annular design (14 individual combustor baskets and transition pieces), which has six

premixed fuel nozzles per combustor, five on the periphery and one in the center.

2. An integral part of the DLN system is the IGV's (Inlet Guide Vanes), which are covered in the complete DLN cost. The IGV's are used in lower load operations to restrict the airflow through the turbine, thereby keeping the emissions in compliance with the DLN software algorithms. At base load, the guide vanes are essentially open. As load is reduced, the guide vanes close off limiting the amount of air flowing into the combustion system. The vanes are located at the inlet side of the combustion turbine compressor and are controlled by an electronic turbine governor based on turbine load.

The system consists of high efficiency combustion liners with thermal barrier coatings, re-designed transition pieces to better capture the combustion gases for more reliable operation and most importantly the 2.6 versions of fuel nozzles for cleaner burning of the fuel gas.

Each CTG exhausts into its own HRSG, which utilizes the exhaust heat to generate steam for use in the STG. Each HRSG is an unfired, three pressure, reheat unit. The steam from the HRSGs drives the STGs. Each of the two General Electric STGs is a reheat, two case, double flow low pressure, down exhaust design. Each STG exhausts into a water-cooled condenser which converts the exhaust steam to water to be pumped back to the HRSGs. The four HRSG's each have an exhaust stack that is approximately 155 feet in height. These stacks are designed to elevate release points of pollutants to improve the dispersion characteristic. This allows the exhaust stream to better mix with the ambient air resulting in lower concentrations of a variety of pollutants.

The cooling water for the STG condenser and other plant coolers will be supplied by the two cooling towers located on the site. Each power block will have one tower associated with it. The cooling towers cool the cooling water by evaporating a portion of the water as it passes over the fill in the tower. Mechanical draft fans draw air over the fill to enhance the cooling effect. The majority of water is recycled in this manner, with only a small wastewater flow required to keep solids buildup below acceptable levels. The raw water will be taken from an intake structure that is built on the Richland Chambers Reservoir and delivered to the Project site by way of a pipeline. This supply water is used directly as makeup water to the cooling towers to replace water lost to evaporation or which must be bled off as waste. The remaining water supply to be used in the HRSGs will be treated using sand filters, packed bed demineralizers, and finally mixed bed demineralizers for polishing. Wastewater from the plant is recycled as much as possible in the cooling tower, with final wastewater being discharged to the nearby Trinity River by way of a wastewater discharge line. The Utility Wastewater discharge stream will be continuously monitored to record flow, temperature, conductivity, and ph and dissolved oxygen for the purpose of reporting and complying with discharge limitations.

The storm water collection sewer system collects rainwater runoff from various portions of the Project and delivers runoff via a drainage system to a collection basin.

Overview of Combined Cycle Technology

The Facility is a combined-cycle gas turbine power plant consisting of gas Combustion Turbines ("CTs") equipped with heat recovery steam generators to capture heat from the gas turbine exhaust. Steam produced in the heat recovery steam generators powers a steam turbine generator(s) to produce additional electric power. The use of otherwise wasted heat in the turbine exhaust gas results in higher plant thermal efficiency compared to other power generation technologies. Combined-cycle plants currently entering service can convert over 50% of the chemical energy of natural gas into electricity (HHV basis). Employment of the Brayton Thermodynamic Cycle (Gas Turbine Cycle) in combination with the Rankine Thermodynamic Cycle results in the improved efficiency.

The Rankine cycle is a thermodynamic cycle that converts heat from an external source into work. In a Rankine cycle, external heat from an outside source is provided to a fluid in a closed-loop system. This fluid, once pressurized, converts the heat into work output using a turbine. The fluid most often used in a Rankine cycle is water (steam) due to its favorable properties, such as nontoxic and unreactive chemistry, abundance, and low cost, as well as its thermodynamic properties. The thermal efficiency of a Rankine cycle is usually limited by the working fluid. Without pressure reaching super critical the temperature range the Rankine cycle can operate over is quite small, turbine entry temperatures are typically 565°C (the creep limit of stainless steel) and condenser temperatures are around 30°C. Traditional coal fired and natural gas fired Rankine cycle power generation plants are limited by the inlet pressures and temperatures of the steam turbine design and the condenser vacuum and temperature. The Rankine cycle can achieve thermodynamic cycle efficiency (useful work obtained as a percentage of fuel input) ranging from 33% to 36%. However, if the Rankine cycle is used in conjunction with or as the "bottoming" cycle to the Brayton cycle the efficiencies can be improved as discussed below. This low turbine entry temperature (compared with a gas turbine) is why the Rankine cycle is often used as a bottoming cycle in combined cycle gas turbine power stations.

The Brayton cycle is a constant pressure thermodynamic cycle that converts heat from combustion into work. A Brayton engine, as it applies to a gas turbine system, will consist of a fuel or gas compressor, combustion chamber, and an expansion turbine. Air is drawn into the compressor, mixed with the fuel, and ignited. The resulting work output is captured through a pump, cylinder, or turbine. A Brayton engine forms half of a combined cycle system, which combines with a Rankine engine to further increase overall efficiency. Cogeneration systems typically make use of the waste heat from Brayton engines, typically for hot water production or space heating.

By combining both gas and steam cycles, high input temperatures and low output

temperatures can be achieved. The efficiency of the cycles are additive, because they are powered by the same fuel source. A combined-cycle plant has a thermodynamic cycle that operates between the gas turbine's high firing temperature and the waste heat temperature from the condensers of the steam cycle. This large range means that the Carnot efficiency of the cycle is high. The actual efficiency, while lower than this is still higher than that of either plant on its own. The thermal efficiency of a combined-cycle power plant is the net power output of the plant divided by the heating value of the fuel. Combined cycle power generation plants that produce only electricity can achieve thermodynamic efficiencies in the range of 53% to 59%, with the normal range being 53% to 56%. Combined cycle power generation plants that produce steam or hot water in conjunction with electric power can improve upon those values by "offsetting" fired boiler operations within adjacent industrial complexes. These facilities are known as combined cycle cogeneration units.

A single-train combined-cycle plant consists of one gas turbine generator, a heat recovery steam generator (HSRG) and a steam turbine generator ("1 x 1" configuration). As an example, an "FA-class" combustion turbine, the most common technology in use for large combined-cycle plants within the state of Texas and other locations throughout the United States, represents a plant with approximately 270 megawatts of capacity. ISO references ambient conditions at 14.7 psia, 59 F, and 60% relative humidity.

See Figure 1 – Standard Combined-Cycle Configuration, below.

It is common to find combined-cycle plants using two or even three gas turbine generators and heat recovery steam generators feeding a single, proportionally larger steam turbine generator. Larger plant sizes result in economies of scale for construction and operation, and designs using multiple combustion turbines provide improved part-load efficiency. A 2 x 1 configuration using FA-class technology will produce about 540 megawatts of capacity at International Organization for Standardization ("ISO") conditions. ISO references ambient conditions at 14.7 psia, 59 F, and 60% relative humidity.

Because of high thermal efficiency, high reliability, and lower air emissions, combined-cycle gas turbines have been the new resource of choice for bulk power generation for well over a decade. Other attractive features include significant operational flexibility, the availability of relatively inexpensive power augmentation for peak period operation and relatively low carbon dioxide production.

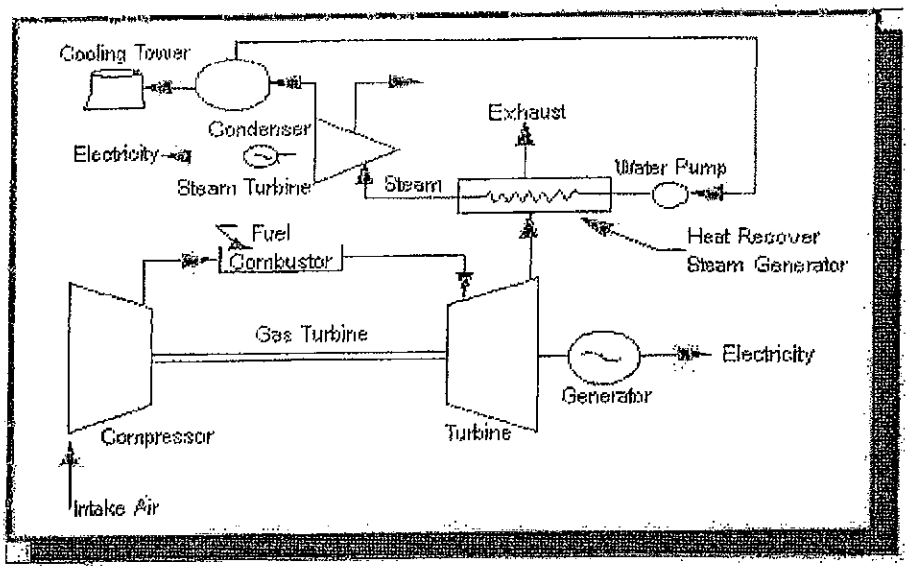


FIGURE 1 - Standard Combined-Cycle Configuration (1)

As an example, consider a gas turbine cycle that has an efficiency of 40%, which is a representative value for current Brayton Cycle gas turbines, and the Rankine Cycle has an efficiency of 30%. The combined-cycle efficiency would be 58%, which is a very large increase over either of the two simple cycles. Some representative efficiencies and power outputs for different cycles are shown in Figure 2 – Comparison of Efficiency and Power Output of Various Power Products, below.

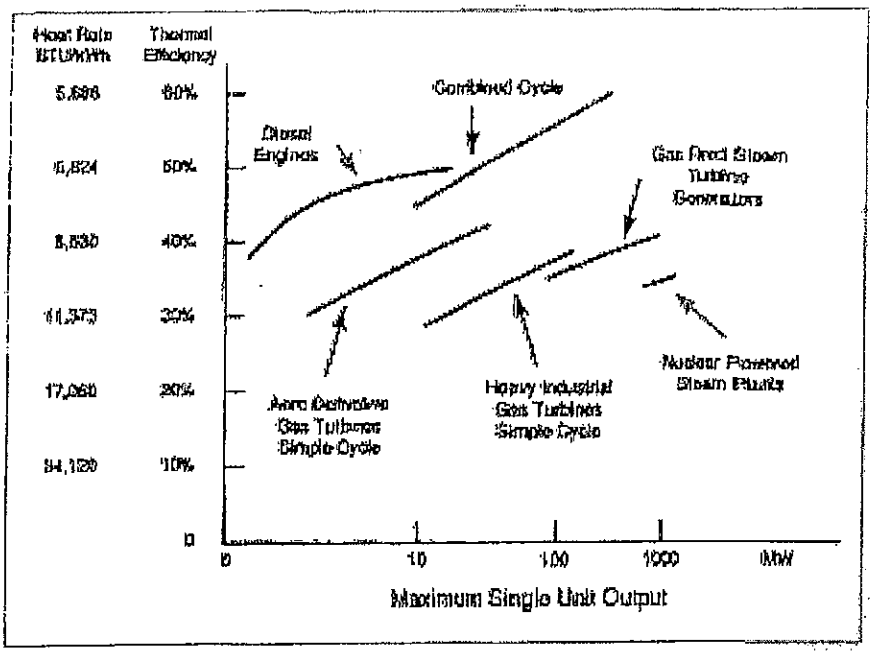


FIGURE 2 - Comparison of efficiency and power output of various power products [Bartol (1997)] (2)

Current Regulatory Authority for Output-Based Emissions

Innovative power technologies such as combined-cycle technology offer enormous potential to improve efficiency and enhance the environmental footprint of power generation through the reduction and/or prevention of air emissions to the environment. Currently, two thirds of the fuel burned to generate electricity in traditional fossil-fired steam boilers is lost. Traditional U.S. power generation facility efficiencies have not increased since the 1950s and more than one fifth of the U.S. power plants are more than 50 years old.(6) In addition, these facilities are the leading contributors to U.S. emissions of carbon dioxide, NOx, sulfur dioxide ("SO2"), and other contaminants into the air and water.

The ability to recognize and regulate the efficiency benefits of pollution reduction and/or prevention through the use of combined-cycle technology is achieved through the use of Output-Based emissions standards, incorporated since September 1998 within the U.S. EPA's new source performance standards ("NSPS") for NOx, from both new utility boilers and new industrial boilers. Pursuant to section 407(c) of the Clean Air Act in subpart Da (Electric Utility Steam Generating Units) and subpart Db (Industrial-Commercial-Institutional Steam Generating Units) of 40 CFR part 60, the U.S. EPA revised the NOx emissions limits for steam generating units for which construction, modification, or reconstruction commenced after July 9, 1997 (3). Output-Based regulations are also exemplified by those used in the U.S. EPA's NOx Cap and Trade Program for the NOx State Implementation Plan

("SIP") Call of 1998, which uses units of measure such as lb/MWh generated or lb concentration ("ppm"), which relate to the emissions to the productive output – electrical generation of the process.(4)

The use of innovative technologies such as combined-cycle units reduces fossil fuel use and leads to multi-media reductions in the environmental impacts of the production, processing transportation, and combustion of fossil fuels. In addition, reducing fossil fuel combustion is a pollution prevention measure that reduces emissions of all products of combustion, not just the target pollutant (currently NOx) of a federal regulatory program.

Authority to Expand Pollution Control Equipment & Categories in Texas

Under Texas House Bill 3732 ("HB3732") enacted in 2007, Section 11.31 of the Texas Tax Code is amended to add certain plant equipment and systems to the current list of air, water, or land pollution control devices exempt from property taxation in Texas.

Specifically, the language reads as follows:

SECTION 4. Section 11.31, Tax Code, is amended by adding Subsections (k), (l), and (m) to read as follows:
(k) The Texas Commission on Environmental Quality shall adopt rules establishing a nonexclusive list of facilities, devices, or methods for the control of air, water, or land pollution, which must include:
(1) coal cleaning or refining facilities;
(2) atmospheric or pressurized and bubbling or circulating fluidized bed combustion systems and gasification fluidized bed combustion combined-cycle systems;
(3) ultra-supercritical pulverized coal boilers;
(4) flue gas recirculation components;
(5) syngas purification systems and gas-cleanup units;
(6) enhanced heat recovery systems;
(7) exhaust heat recovery boilers;
(8) heat recovery steam generators;
(9) superheaters and evaporators;
(10) enhanced steam turbine systems;
(11) methanation;
(12) coal combustion or gasification byproduct and coproduct handling, storage, or treatment facilities;
(13) biomass cofiring storage, distribution, and firing systems;
(14) coal cleaning or drying processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology;
(15) oxy-fuel combustion technology, amine or chilled ammonia scrubbing, fuel or emission conversion through the use of catalysts, enhanced scrubbing technology, modified combustion technology such as chemical looping, and cryogenic technology;
(16) if the United States Environmental Protection Agency adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state;
(17) fuel cells generating electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste; and
(18) any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.
(l) The Texas Commission on Environmental Quality by rule shall update the list adopted under Subsection (k) at least once every three years. An item may be removed from the list if the commission finds compelling evidence to support the conclusion that the item does not provide pollution control benefits.
(m) Notwithstanding the other provisions of this section, if the facility, device, or method for the

control of air, water, or land pollution described in an application for an exemption under this section is a facility, device, or method included on the list adopted under Subsection (k), the executive director of the Texas Commission on Environmental Quality, not later than the 30th day after the date of receipt of the information required by Subsections (c)(2) and (3) and without regard to whether the information required by Subsection (c)(1) has been submitted, shall determine that the facility, device, or method described in the application is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution and shall take the actions that are required by Subsection (d) in the event such a determination is made.

Under the TCEQ's recently updated "Tax Relief for Pollution Control Property – Application Instructions and Equipment and Categories List – Effective January 2008", the Equipment and Categories List - Part B ("ECL Part B") is a list of the pollution control property categories adopted and set forth in TTC Sec. 26.045(f). The taxpayer is to supply a pollution control percentage for the equipment listed in Part B via calculations demonstrating pollution control, prevention and/or reductions achieved by the listed equipment or systems.

The following property descriptions outline the environmental purpose, including the anticipated environmental benefit of pollution control additions considered under the Application Instructions' ECL Part B that have been constructed and placed into use at the Facility as of its placed-in-service date, or installed subsequent to in-service since 1994:

Property Descriptions

Item #1 Combined-Cycle Gas Turbine Plant Heat Recovery Steam Generator ("HRSG") and Support Systems Tier IV B-8

40 CFR Part 60 Subparts DA and DB, NOx Limits for Electric Utility Steam Generating Units and Industrial-Commercial-Institutional Steam Generating Units for New Source Performance Standards ("NSPS").

TAC Rule 106.512, Standard Permit for Electric Generating Units (EGU)

NOTE: Permits issued under Texas Clean Air Act's Health & Safety Code Sections 382.011, applies to all electric generating units that emit air contaminants, regardless of size, and it is to reflect Best Available Control Technology ("BACT") for electric generating units on an output basis in pounds of NOx per megawatt hour, adjusted to reflect a simple cycle power plant.

The heat recovery steam generator ("HRSG") found in the Facility is a heat exchanger that recovers heat from a hot gas stream. It produces steam that can be used in a process or used to drive a steam turbine. A common application for an HRSG is in a combined-cycle power station, where hot exhaust from a gas turbine is fed to an HRSG to generate steam which in turn drives a steam turbine. This combination produces electricity in a more thermally efficient manner than either the gas turbine or steam turbine alone.

The Facility's HRSGs consist of three major components: the Evaporator, Superheater, and Economizer. The different components are put together to meet the operating requirements of the unit. Modular HRSGs normally consist of three sections: an LP (low pressure) section, a reheat/IP (intermediate pressure) section, and an HP (high pressure) section. The reheat and IP sections are separate circuits inside the HRSG. The IP steam partly feeds the reheat section. Each section has a steam drum and an evaporator section where water is converted to steam. This steam then passes through superheaters to raise the temperature and pressure past the saturation point.

Item #2 Steam Turbine and Support Systems Tier IV B-10

40 CFR Part 60 Subparts DA and DB, NOx Limits for Electric Utility Steam Generating Units and Industrial-Commercial-Institutional Steam Generating Units for New Source Performance Standards ("NSPS").

TAC Rule 106.512, Standard Permit for Electric Generating Units (EGU)

NOTE: Permits issued under Texas Clean Air Act's Health & Safety Code Sections 382.011, applies to all electric generating units that emit air contaminants, regardless of size, and it is to reflect Best Available Control Technology ("BACT") for electric generating units on an output basis in pounds of NOx per megawatt hour, adjusted to reflect a simple cycle power plant.

The steam turbine(s) found in the Facility operate on the Rankine cycle in combination with the Brayton cycle, as described above. Steam created in the Facility HRSG(s) from waste heat that would have otherwise been lost to the atmosphere enters the steam turbine via a throttle valve, where it powers the turbine

and connected generator to make electricity. Use of HRSG/Steam Turbine System combination provides the Facility with an overall efficiency of greater than 50%. Steam turbine systems similar to the Facility's have a history of achieving up to 95% availability on an annual basis and can operate for more than a year between shutdown for maintenance and inspections. (5)

Pollution Control Percentage Calculation: Avoided Emissions Approach

To calculate the percentage of the equipment or category deemed to be pollution control equipment, the Avoided Emissions approach has been used. This approach relies on thermal output differences between a conventional power generation system and the combined-cycle system at the Facility. Specifically, the percentage is determined by calculating the displacement of emissions associated with the Facility's thermal output and subtracting these emissions from a baseline emission rate. These displaced emissions are emissions that would have been generated by the same thermal output from a conventional system.

Greater energy efficiency reduces all air contaminant emissions, including the greenhouse gas, carbon dioxide. Higher efficiency processes include combined-cycle operation and combined heat and power ("CHP") generation. For electric generation the energy efficiency of the process expressed in terms of millions of British thermal units ("MMBTU's") per Megawatt-hour. Lower fuel consumption associated with increased fuel conversion efficiency reduces emissions across the board – that is NOx, SOx, particulate matter, hazardous air pollutants, and greenhouse gas emissions such as CO2.

In calculating the percent exempt for the listed items from the ECL-Part B, we utilized Output-Based NOx allocation method for both power generation projects that replaced existing facilities and "Greenfield" power and heat generation facilities. We looked at the various fossil fuel technologies in use today and chose the baseline facility to be a natural gas fuel-fired steam generator. We benchmarked this conventional generation to the subject natural gas-fired combined cycle generator at the Facility. By doing so, we narrowed the heat rate factors as much as possible to be conservative and uniform in modeling. The benchmark heat rate factor is the following:

Natural Gas fuel-fired Steam Generator: 10,490 BTU's/kWh

This baseline heat rate purposely omits other fossil fuel sources in order to eliminate impurity type characteristics, which in turn eliminated the NOx emission and cost of control differences of each fossil fuel and generator type. Comparing the emissions impact of different energy generation facilities is concise when emissions are measured per unit of useful energy output. For the purpose of our calculations, we converted all the energy output to units of MWh (1 MWh = 3.413 MMBTU), and compared the total emission rate to the baseline facility.

The comparison steps to calculate the NOx reduction is as follows:

Calculation (Reference Schedule A)

Step 1 – Subject Output-Based Limit Calculation (lbs NOx / MWh)

(Input-based Limit (lbs NOx/MMBTU)) X (Heat Rate (Btu/kWh)) / (1,000,000 Btu / 1,000 kWh) = Output: (lbs NOx/MWh).

Step 2 – Subject Output Conversion Calculation (NOx Tons / Year)

(Output (lbs NOx/MWh) X (Unit Design Capacity (MW)) X (Capacity Factor) X ((365 Days) X (24 hrs/day)) / 2,000 lbs = Output: (NOx Tons/Year)

Step 3 – Baseline Output-Based Limit Calculation (lbs NOx / MWh)

(Input-based Limit (lbs NOx/MWh)) X (Heat Rate (Btu/kWh)) / (1,000,000 Btu / 1,000 kWh) = Output: (lbs NOx/MWh)

Step 4 – Baseline Output Conversion Calculation (NOx Tons / Year)

(Output (lbs NOx/MMBtu) X (Unit Design Capacity (MW)) X (Capacity Factor) X ((365 Days) X (24 hrs/day)) / 2,000 lbs = Output: (NOx Tons/Year)

Step 5 – Percent NOx Reduction Calculation

$((\text{Output Baseline})_{\text{step 4}} - (\text{Output Subject})_{\text{step 2}}) / (\text{Output Subject})_{\text{step 2}} = \%$ Reduction Output Subject

Step 6 – Percent Exempt Calculation

(Total Subject Facility Cost) X (% NOx Reduction) = Capital Cost of NOx Avoidance

Step 7 – Percent Exempt Calculation

Total Cost of NOx Avoidance / Total Cost of HB 3732 Equipment = % Exempt

- If % Exempt is greater than 100% HB 3732 Equipment is 100% Exempt
- If % Exempt is less than 100% then HB 3732 Equipment is partially exempt at the Step 6 calculation.

NOTE: See the attached calculation sheet for the details regarding Facility-specific calculations and property tax exemption percentage results based upon these calculations.

REFERENCES

1. "Output-Based Regulations: A Handbook for Air Regulators", U.S. Environmental Protection Agency, Office of Atmospheric Programs – Climate Protection Partnerships Division, August, 2004, p.4.

2. "Output-Based Emissions Standards; Advancing Innovative Energy Technologies", Northeast-Midwest Institute; 2003, p. 9.

3. IBID, p.13.

4."Output-Based Regulations: A Handbook for Air Regulators", U.S. Environmental Protection Agency, Office of Atmospheric Programs – Climate Protection Partnerships Division, August, 2004, p.4.

5. http://www.cogeneration.net/Combined_Cycle_Power_Plants.htm

6. "Output-Based Emissions Standards; Advancing Innovative Energy Technologies", Northeast-Midwest Institute; 2003, p. 9.

9. PARTIAL PERCENTAGE CALCULATION

N/A.

10. PROPERTY CATEGORIES AND COSTS

See attached Schedule 10.

11. EMISSION REDUCTION INCENTIVE GRANT

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

[ ] Yes [X] No

12. 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 written notice.

13. 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: 25 March 2008

TITLE: Director

COMPANY: Duff & Phelps LLC

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.

14. DELINQUENT FEE/PENALTY PROTOCOL

This form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol. (Effective 9/1/2006)

Calpine
Freestone
TCEQ Use Determination Application - 2008
Schedule 10
Tier IV

10. PROPERTY CATEGORIES AND COST

PROPERTY	PROJECT ID. NO.	IN SERVICE DATE	TAXABLE ON OR BEFORE 1/1/1947 (Y / N)	TIER IV DECISION FLOW CHART BOX	ECL NUMBER	ESTIMATED PURCHASE COST	% EXEMPT	EXEMPT COST
Heat Recovery Steam Generators (HRSG)	1	2002	N	3	B-8	$ 53,270,644	100%	$ 53,270,644
Steam Turbine Systems	2	2002	N	3	B-10	$ 8,996,415	100%	$ 8,996,415
					Tier IV Total	$ 62,267,059		$ 62,267,059

Calculation
Procedure
Schedule A - 2008 Thermal Efficiency Calculation

Subject Details:

Average Heat Rate [1]		7,050 (Btu/kWh)
NOx Emissions [2]		405 Tons/year
Plant Capacity [3]		1,038 MW
Capacity Factor [4]		47.05%
Technology [5]		Combined Cycle
Total Subject Facility Cost [6]	$	492,000,000
Total Cost of Tier IV Equipment [7]	$	62,267,059

Baseline Details:

Average Heat Rate [8]	10,490 Btu/kWh
Technology [9]	Steam Turbine

STEP 1
Subject Output-Based Limit Calculation (lbs NOx/MWh)

Input-based Limit (lbs NOx/MMBtu)	x	Heat Rate (Btu/kWh)	/	Unit Conversions (1,000,000 Btu / 1000 kWh)	=	Output-based Limit (lbs NOx/MWh)
0.0292		7,050		1,000		0.2061

STEP 2
Subject Output Conversion Calculation (NOx Tons/Year)

Output-based Limit (lbs NOx/MWh)	x	Capacity (MW)	x	Capacity Factor	x	Unit Conversions (365 days * 24 Hours / 2,000 lbs)	=	Output NOx (Tons/Year)
0.2061		1038		47.05%		4		402.7

STEP 3
Baseline Output-Based Limit Calculation (lbs NOx/MWh)

Input-based Limit (lbs NOx/MMBtu)	x	Heat Rate (Btu/kWh)	/	Unit Conversions (1,000,000 Btu / 1000 kWh)	=	Output-based Limit (lbs NOx/MWh)
0.0292		10,490		1,000		0.3063

STEP 4
Baseline Output Conversion Calculation (NOx Tons/Year)

Output-based Limit (lbs NOx/MWh)	x	Capacity (MW)	x	Capacity Factor	x	Unit Conversions (365 days * 24 Hours / 2,000 lbs)	=	Output NOx (Tons/Year)
0.3063		1038		47.05%		4		598.4

STEP 5
Percent NOx Reduction Calculation

Output Baseline	=	Output Subject	/	Output Subject	=	% NOx Reduction
598.4		402.7		402.7		48.6%

STEP 6
Percent Exempt Calculation

Total Subject Unit Cost	x	% NOx Reduction	=	Overall Cost of NOx Avoidance
$492,000,000		48.6%		$239,112,000

STEP 7
Percent Exempt Calculation

Total Cost of NOx Avoidance	$	Total Cost of HB 3732 Equipment	=	% Exempt
$239,112,000		$62,267,059		384.0%

Conclude	100%

(1) - Heat rate represents plant actual heat rate (HHV) and was provided by the client
(2) - NOx emissions is the actual NOx pollutant produce in ppm and was provide by the client
(3) - Plant capacity is the average nominal capacity and was provided by the client
(4) - Capacity factor represents the average annual capacity factor and was provided by the client "Average" was determined by a weighted average based on the net actual generation of EB
(5) - Technology represents the actual technology of the subject
(6) - Total subject facility cost represents the total cost to build the entire facility and it was determined based on data provide by the client
(7) - Total Tier IV equipment was determined by allocating the eligible TCEQ EC, part B equipment and their associated cost from actual data provide by the client
(8) - Baseline heat rate was published by the Energy Information Administration ("EIA").
(9) - Baseline technology represents the technology that the subject would have replaced at the time of the subjects construction

DUFF & PHELPS

Greg Maxim
Director
Phone:(512) 671-5580
gregory.maxim@duffandphelps.com

March 25, 2008

TCEQ - Cashiers Office MC-214
Building A
12100 Park 35 Circle
Austin, Texas 78753

Subject: Application for Use Determination for Pollution Control Property
Freestone Energy Center - 13.6 mi north on FM 488 from Fairfield. Fairfield, Texas

Enclosed please find one application (the "Application") for property tax exemptions for certain qualifying pollution control property at the Freestone Energy Center Project (the "Facility") in Freestone County, Texas.

Pursuant to Title 30 of Chapter 17 of the Texas Administrative Code, the Application has been prepared using the Texas Commission on Environmental Quality ("TCEQ") Application for Use Determination for Pollution Control Property. The enclosed application is a Tier IV Application.

Submission of this Application is required as a process step in the TCEQ's pollution control certification process for tax exemption of certain assets used in pollution control capacities within the Facility. As outlined by the application instructions, the fee for this Tier IV Application is $500. Enclosed please find a check for $500 for the Application processing.

The Application can be summarized as follows:

Property	Description	Estimated Cost
Tier IV	See Attached Schedule	$62,267,059

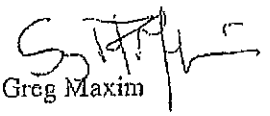
Please send one copy of the completed property tax exemption Use Determination to the following address:

Duff and Phelps LLC
c/o Greg Maxim
919 Congress Ave.
Suite 1450
Austin, TX 78701

If you have any questions regarding the Application or the information supplied with these Application, please contact Greg Maxim of Duff & Phelps, LLC at (512) 671-5580 or e-mail at gregory.maxim@duffandphelps.com.

Very truly yours,

DUFF & PHELPS LLC

Signature: 

Name: Greg Maxim

Title: Director

Enclosures

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 28, 2008

CHIEF APPRAISER
FREESTONE COUNTY APPRAISAL DISTRICT
218 N MOUNT
FAIRFIELD TX 75840

This letter is to inform you that a Use Determination Application has been filed by:

FREESTONE POWER GENERATION LP

for:

FREESTONE POWER GENERATION LP
1366 FM 488
FAIRFIELD TX 75840-

Appraisal District Account Number: M-0012170-9900015

This facility is located in FREESTONE County.

A complete copy of the application is included with this letter. We recommend that a copy of this application be shared with the person who conducts the appraisal of this property.

This application has been assigned a tracking number of 07 -11966. Please contact the Tax Relief for Pollution Control Property Program at (512) 239-3100 if you have any questions.

Sincerely,

Ron Hatlett
Tax Relief for Pollution Control Property Program

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 8, 2008

DUFF & PHELPS LLC
GREG MAXIM
919 CONGRESS #1450
AUSTIN TX 78701 -

This letter is to inform you that on 4/8/2008, Use Determination Application, 07-11966 (self assigned tracking number **DPFREESTONE B**), was declared to be administratively complete. This application was filed for the following facility:

FREESTONE POWER GENERATION LP
1366 FM 488
FAIRFIELD TX 75840

The next step in the Use Determination Application process is the technical review of the application. If this is a Tier I, II, or III application the technical review will be completed within sixty days of the administrative complete date. If this is a Tier IV application the technical review will be completed within 30 days of the administrative complete date. If additional technical information is required a notice of deficiency letter (NOD) will be issued. The time period between the issuance of the NOD and the receipt of the response is not counted in determinating the length of the technical review .The TCEQ will notify you after the technical review has been completed. In accordance with the statute, the TCEQ has mailed a notice of receipt of this Use Determination Application to the FREESTONE County Appraisal District. Please contact the Tax Relief for Pollution Control Property Program at (512) 239-3100 if you have any questions.

Sincerely,

Ron Hatlett
Tax Relief for Pollution Control Property Program

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 1, 2008

CHIEF APPRAISER
FREESTONE COUNTY APPRAISAL DISTRICT
218 N MOUNT
FAIRFIELD, TX 75840

This letter is to inform you that on 5/1/2008, a final determination was issued with regard to Use Determination application 07-11966, filed by:

FREESTONE POWER GENERATION LP
FREESTONE ENERGY CENTER
13.6 MI N ON FM 488
FAIRFIELD, TX 75840

A copy of the use determination is included with this letter. 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.

In order to qualify for a tax exemption, the applicant must file an exemption request with your appraisal district. This exemption request must be accompanied by a copy of the positive use determination issued by the TCEQ. If you have any questions regarding this Use Determination or the appeals process, please call me at 512/239-3100.

Sincerely,

David Greer
Team Leader, Pollution Prevention

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 1, 2008

DUFF & PHELPS LLC
GREG MAXIM
919 CONGRESS #1450
AUSTIN, TX 78701

This letter is to inform you that on 5/1/2008, the technical review of Use Determination Application 07-11966 was completed. This application is for:

FREESTONE POWER GENERATION LP
FREESTONE ENERGY CENTER
13.6 MI N ON FM 488
FAIRFIELD, TX 75840

The use determination is included with this letter. In order to request an exemption, a copy of this Use Determination, along with a completed exemption request form #50-248 (can be found at www.cpa.state.tx.us), must be provided to the Chief Appraiser of the appropriate appraisal district. This request must be made by April 30.

House Bill 3121, enacted during the 77th Legislative 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 Tax Relief for Pollution Control Property Program at (512) 239-3100.

Sincerely,

David Greer
Team Leader, Pollution Prevention

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11966, filed by:

FREESTONE POWER GENERATION LP
FREESTONE ENERGY CENTER
13.6 MI N ON FM 488
FAIRFIELD TX 75840

The pollution control property/project listed in the Use Determination Application is:

This facility has four thermally efficient heat recovery steam generators (HRSGs) and two steam turbines. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the four Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the two steam turbines. The use of the steam turbines does not provide an environmental benefit at the site. The steam turbines are not considered to be pollution control equipment.

Executive Director

May 1 2008
Date

TAX RELIEF FOR POLLUTION CONTROL PROPERTY: TECHNICAL REVIEW DOCUMENT

Reviewed By: RLH App. No.: 07 - 11966 Review Start Date: 4/8/2008

Company Name: FREESTONE POWER GENERATION LP
Facility Name: FREESTONE POWER GENERATION LP
County: FREESTONE Outstanding Fees: N
Batch/Voucher Number:B500156

ADMINISTRATIVE REVIEW

Administrative Complete Date:4/8/2008

TIER LEVEL
What Tier is this application? The application was filed as a Tier IV application. Is this the appropriate level?

The property listed on this application, Heat Recovery Steam Generators and a steam turbine are items B8 and B10 on the Equipment and Categories List. This application was filed as a Tier IV. Tier IV is the appropriate level for this application.

RELEVANT RULE, REGULATION, OR STATUTORY PROVISION
The rule listed in the application is: 40 CFR 60.44Da
The appropriate rule is: 40 CFR 60.44Da

Explain why this is the appropriate rule?

40 CFR 60.Subpart DA: Standards of Performance for New Stationary Sources. Standards of performance for Electric Utility Steam Generating Units for Which Construction is Commenced after September 18, 1978. This is an appropriate rule.

BRIEF DESCRIPTION OF PROPERTY
The property is described as:

This facility has four thermally efficient heat recovery steam generators (HRSGs) and two steam turbines. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

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?

An adequate description of the property was provided, and the purpose of the property was listed. The anticipated environmental benefit is listed. Sketches and flow diagrams were provided.

DECISION FLOWCHART(30 TAC 17.15(a))
Mark the appropriate boxes: Box 3 Box 5 Box 6(IV) Y Box 10(III) Box 12(I) Box 13(II)
PART B DECISION FLOWCHART (17.15(b))
Mark the appropriate boxes: Box 1 Y Box 2 Y Box 3 Y

Describe how the property flowed through the Decision Flowchart:

Since the property is listed on Part B of the Equipment & Categories List this property leaves the Decision Flow Chart at Box 6. It passes through Box 1 of the Part B Decision Flow Chart with a yes answer. The use of this property at a combined cycle plant, as opposed to having a simple

cycle plant, provides an environmental benefit of reduced NOx emissions at the site. So there is a Yes answer for Box 2, Since there is a reduction in NOx emissions there is an environmental rule which is being met so there is a yes answer to Box 3. The steam turbine passes through Box 1 on the Part B Decision Flow Chart with a yes answer. Since the use of the steam turbine does not provide an environmental benefit at the site a no answer is the result of Box 2. The steam turbine is not eligible for a positive determination.

TIER III or IV APPLICATIONS

Does your calculation agree with the applicants?

No. The application contains a proposed formula for calculating the pollution control value of the HRSGs and the steam turbine. The formula is outcome determinative, and its focus is not on the pollution control aspect of the property. The Executive Director disagrees with this formula.

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.

The table was completed correctly. The applicant certified that all listed property became taxable for the first time after January 1, 1994. All the information necessary for conducting the technical review was included on the application.

TECHNICAL DEFICIENCIES

Is the application complete as received: Y If the application was not administratively complete explain below when justifying the final decision in the final determination section. If the application was not technically complete then:

Provide the language to be used in the Notice of Deficiency (NOD) letter:

Summarize the NOD response:

Provide the language used in the second NOD letter:

Summarize the second NOD response:

Provide the language used in the thied NOD letter:

Summarize the third NOD response:

FINAL DETERMINATION

If the property description has been summarized enter the detailed property description:

This facility has four thermally efficient heat recovery steam generators (HRSGs) and two steam

turbines. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

Provide the reason for your final determination:

The Heat Recovery Steam Generators meet all of the requirements of Chapter 17. A positive use determination based on the most appropriate formula should be issued for the Heat Recovery Steam Generators. The most appropriate formula has been determined by the Executive Director. A negative determination should be issued for the steam turbine. The use of the steam turbine does not result in there being an environmental benefit at the site.

Provide the language for the final determination.

A positive use determination of 100% for the four Heat Recovery Steam Generators. A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Highlight the required signatures and establish the appropriate due dates.

Reviewed: Date Signed: 5/1/08

Peer Reviewed: Date Signed: 5-1-08

Team Leader: Date Signed: 5/1/08

Section Manager: Date Signed: MAY 1 2008

Division Director: Date Signed: MAY 1 2008

Executive Director's Exhibit 3

Borger: Application and Use Determination Documents

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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

831771

2009 MAY 23 AM 8:43

CHIEF CLERKS OFFICE

The TCEQ has the responsibility to determine whether a property is a pollution control property. A person 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 Tax Relief for Pollution Control Property Program at (512) 239-3100. The application should be completed and mailed, along with a complete copy and 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
- ☐ Partnership
- ☑ Limited Partnership
- ☐ Sole Proprietor
- ☐ Utility
- ☐ Other

B. Size of company: Number of Employees

- ☑ 1 to 99
- ☐ 100 to 499
- ☐ 500 to 999
- ☐ 1,000 to 1,999
- ☐ 2,000 to 4,999
- ☐ 5,000 or more

C. Business Description: **Combination Electric and Other Utility (4931)**

2. TYPE OF APPLICATION

- ☐ **Tier I $150 Application Fee**
- ☐ **Tier II $1,000 Application Fee**
- ☐ **Tier III $2,500 Application Fee**
- ☑ **Tier IV $500 Application Fee**

NOTE: Enclose a check, money order to the TCEQ, or a copy of the ePay receipt along with the applicaton to cover the required fee.

3. NAME OF APPLICANT

A. Company Name: Borger Energy Associates, LP

B. Mailing Address (Street or P.O. Box): 7001 Boulevard 26 Suite 310

C. City, State, ZIP: North Richland Hills, Texas 76180

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

A. Name of facility: Blackhawk Station

B. Type of Mfg Process or Service: Combination Electric and Other Utility (4931)

C. Street Address: 119 N. Spur Co-Gen Place

D. City, State, ZIP: Borger, TX 79008

E. Tracking Number Assigned by Applicant: DPBlackhawk B

F. Customer Number or Regulated Entity Number: N/A

5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY

A. Name of Appraisal District: Hutchinson

B. Appraisal District Account Number: 990 (1000, 1010, 1100, 1120, 1140, 1160, 1180, 1200, 1220, 1240)

6. CONTACT NAME (must be provided)

A. Company/Organization Name:	Duff and Phelps LLC	
B. Name of Individual to Contact:	Dennis Deegear	
C. Mailing Address:	919 Congress Ave.	Suite 1450
D. City, State, ZIP:	Austin, TX 78701	
E. Telephone number and fax number:	(512) 671-5523	Fax (512) 671-5501
F. E-Mail address (if available):	dennis.deegear@duffandphelps.com	

7. RELEVANT RULE, REGULATION, OR STATUTORY PROVISION

Please reference Section 8. Each item is detailed with the proper statute, regulation, or environmental regulatory provision.

8. DESCRIPTION OF PROPERTY

Background

Blackhawk Station is a 225 MW cogeneration facility located in Borger, Texas owned by Borger Energy Associates LP. Blackhawk Station's design incorporates two Siemens 501D5A gas turbines, and two Deltak HRSGs. The exhaust from the combustion turbines is directed to the HRSGs where the thermal energy in the exhaust gases is recovered to generate steam. The high pressure steam produced in the HRSGs is exported to the adjoining Wood River Borger Refinery. Natural Gas serves as the fuel for each gas turbine.

Overview of Cogeneration Technology

The Facility is a cogeneration plant that consists of two gas-fired Combustion Turbines ("CTs") equipped with heat recovery steam generators (HRSG's) to capture heat from the turbine exhaust. Steam produced in the HRSG's provides steam for production purposes to the Facility's steam host, Wood River Borger Refinery LLC. Use of the otherwise wasted heat in the turbine exhaust gas results in higher plant thermal efficiency compared to other power generation technologies.

Combined heat and power (CHP) plants are often equipped with a steam turbine and have the added flexibility over a cogeneration plant to generate additional electricity if needed or sell its steam directly to an industrial facility commonly referred to as a "steam host". Additional efficiency is gained in CHP and cogeneration applications by using steam from the steam generator to serve direct thermal loads. Though increasing overall thermal efficiency, the choice of using steam for these applications instead of powering a steam-driven turbine reduces the electrical output of the plant.

The following overview describes technology that is common to both cogeneration and CHP electric power generation facilities. The significant difference between the two types of facilities is the use of the thermal energy generated by the combustion turbines. Because Blackhawk does not have a steam turbine and uses its thermal energy to supply steam to the Wood River Borger Refinery any portion of the

overview relating to steam turbine power generation does not apply to this facility.

The Brayton cycle is a constant pressure thermodynamic cycle that converts heat from combustion into work. A Brayton engine, as it applies to a gas turbine system, will consist of a fuel or gas compressor, combustion chamber, and an expansion turbine. Air is drawn into the compressor, mixed with the fuel, and ignited. The resulting work output is captured through a pump, cylinder, or turbine. Cogeneration systems typically make use of the waste heat from Brayton engines for steam production.

The Rankine cycle is a thermodynamic cycle that converts heat from an external source into work. In a Rankine cycle, external heat from an outside source is provided to a fluid in a closed-loop system. This fluid, once pressurized, converts the heat into work output using a turbine. The fluid most often used in a Rankine cycle is water (steam) due to its favorable properties, such as nontoxic and unreactive chemistry, abundance, and low cost, as well as its thermodynamic properties. The thermal efficiency of a Rankine cycle is usually limited by the working fluid. Steam generated in a cogeneration plant is typically sold to and directly used by a steam host.

By combining both gas and steam cycles, high input temperatures and low output temperatures can be achieved. A cogeneration plant has a thermodynamic cycle that operates between the gas turbine's high firing temperature and the waste heat temperature from its exhaust. This large range means that the Carnot efficiency of the cycle is high. The actual efficiency, while lower than this is still higher than that of either plant on its own. The thermal efficiency of a cogeneration plant can be measured as the net electric and steam power output of the plant divided by the heating value of the fuel.

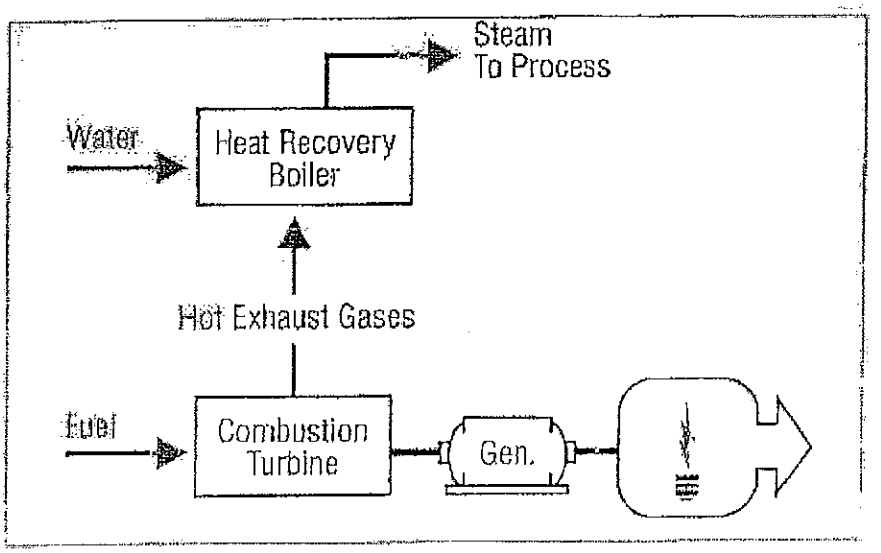


FIGURE 1 - Cogeneration Plant Configuration (1)

A single-train cogeneration plant consists of one CT, a generator, and a HSRG (See Figure 1 – Cogeneration Plant Configuration, below). Because of high thermal efficiency, high reliability, and low air emissions, cogeneration CT's and HRSG's have been the new resource of choice for bulk power generation and industrial steam production for well over a decade. Other attractive features include significant operational flexibility, the availability of relatively inexpensive power augmentation for peak period operation and relatively low carbon dioxide production.

Current Regulatory Authority for Output-Based Emissions

Innovative power technologies such as cogeneration technology offer enormous potential to improve efficiency and enhance the environmental footprint of power generation through the reduction and/or prevention of air emissions to the environment. Currently, two thirds of the fuel burned to generate electricity in traditional fossil-fired steam boilers is lost. Traditional U.S. power generation facility efficiencies have not increased since the 1950s and more than one fifth of the U.S. power plants are more than 50 years old. In addition, these facilities are the leading contributors to U.S. emissions of carbon dioxide, NOx, sulfur dioxide ("SO2"), and other contaminants into the air and water.

The ability to recognize and regulate the efficiency benefits of pollution reduction and/or prevention through the use of cogeneration technology is achieved through the use of Output-Based emissions standards, incorporated since September 1998 within the U.S. EPA's new source performance standards ("NSPS") for NOx, from both new utility boilers and new industrial boilers. Pursuant to section 407(c) of the Clean Air Act in subpart Da (Electric Utility Steam Generating Units) and subpart Db (Industrial-Commercial-Institutional Steam Generating Units) of 40 CFR part 60, the U.S. EPA revised the NOx emissions limits for steam generating units for which construction, modification, or reconstruction commenced after July 9, 1997 (3). Output-Based regulations are also exemplified by those used in the U.S. EPA's NOx Cap and Trade Program for the NOx State Implementation Plan ("SIP") Call of 1998, which uses units of measure such as lb/MWh generated or lb concentration ("ppm"), which relate to the emissions to the productive output – electrical generation of the process.(4)

The use of innovative technologies such as cogeneration units reduces fossil fuel use and leads to multi-media reductions in the environmental impacts of the production, processing transportation, and combustion of fossil fuels. In addition, reducing fossil fuel combustion is a pollution prevention measure that reduces emissions of all products of combustion, not just the target pollutant (currently NOx) of a federal regulatory program.

Authority to Expand Pollution Control Equipment & Categories in Texas

Under Texas House Bill 3732 ("HB3732") enacted in 2007, Section 11.31 of the Texas Tax Code is amended to add certain plant equipment and systems to the current list of air, water, or land pollution control devices exempt from property taxation in Texas.

Specifically, the language reads as follows:

SECTION 4. Section 11.31, Tax Code, is amended by adding Subsections (k), (l), and (m) to read as follows:
(k) The Texas Commission on Environmental Quality shall adopt rules establishing a nonexclusive list of facilities, devices, or methods for the control of air, water, or land pollution, which must include:
(1) coal cleaning or refining facilities;
(2) atmospheric or pressurized and bubbling or circulating fluidized bed combustion systems and gasification fluidized bed combustion combined-cycle systems;
(3) ultra-supercritical pulverized coal boilers;
(4) flue gas recirculation components;
(5) syngas purification systems and gas-cleanup units;
(6) enhanced heat recovery systems;
(7) exhaust heat recovery boilers;
(8) heat recovery steam generators;
(9) superheaters and evaporators;
(10) enhanced steam turbine systems;
(11) methanation;
(12) coal combustion or gasification byproduct and coproduct handling, storage, or treatment facilities;
(13) biomass cofiring storage, distribution, and firing systems;
(14) coal cleaning or drying processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology;
(15) oxy-fuel combustion technology, amine or chilled ammonia scrubbing, fuel or emission conversion through the use of catalysts, enhanced scrubbing technology, modified combustion technology such as chemical looping, and cryogenic technology;
(16) if the United States Environmental Protection Agency adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state;
(17) fuel cells generating electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste; and
(18) any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.
(l) The Texas Commission on Environmental Quality by rule shall update the list adopted under Subsection (k) at least once every three years. An item may be removed from the list if the commission finds compelling evidence to support the conclusion that the item does not provide pollution control benefits.
(m) Notwithstanding the other provisions of this section, if the facility, device, or method for the control of air, water, or land pollution described in an application for an exemption under this section is a facility, device, or method included on the list adopted under Subsection (k), the executive director of the Texas Commission on Environmental Quality, not later than the 30th day after the date of receipt of the information required by Subsections (c)(2) and (3) and without regard to whether the information required by Subsection (c)(1) has been submitted, shall determine that the facility, device, or method described in the application is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution and shall take the actions that are required by Subsection (d) in the event such a determination is made.

Under the TCEQ's recently updated "Tax Relief for Pollution Control Property – Application Instructions and Equipment and Categories List – Effective January 2008", the Equipment and Categories List - Part B ("ECL Part B") is a list of the pollution control property categories adopted and set forth in TTC Sec. 26.045(f). The taxpayer is to supply a pollution control percentage for the equipment listed in Part B via calculations demonstrating pollution control, prevention and/or reductions achieved by the listed equipment or systems.

The following property descriptions outline the environmental purpose, including

the anticipated environmental benefit of pollution control additions considered under the Application Instructions' ECL Part B that have been constructed and placed into use at the Facility as of its placed-in-service date, or installed subsequent to in-service since 1994:

Property Descriptions

Item #1 Cogeneration Gas Turbine Plant Heat Recovery Steam Generator ("HRSG") and Support Systems Tier IV B-8

40 CFR Part 60 Subparts DA and DB, NOx Limits for Electric Utility Steam Generating Units and Industrial-Commercial-Institutional Steam Generating Units for New Source Performance Standards ("NSPS").

TAC Rule 106.512, Standard Permit for Electric Generating Units (EGU)

NOTE: Permits issued under Texas Clean Air Act's Health & Safety Code Sections 382.011, applies to all electric generating units that emit air contaminants, regardless of size, and it is to reflect Best Available Control Technology ("BACT") for electric generating units on an output basis in pounds of NOx per megawatt hour, adjusted to reflect a simple cycle power plant.

The heat recovery steam generator ("HRSG") found in the Facility is a heat exchanger that recovers heat from a hot gas stream. A common application for an HRSG is in a cogeneration power station, where hot exhaust from a gas turbine is fed to an HRSG to generate steam which can either be used to drive a steam turbine or be sold directly to a steam host. This combination produces electricity in a more thermally efficient manner than either the gas turbine or steam turbine alone.

The HRSG is also an important component in cogeneration plants. Cogeneration plants typically have a higher overall efficiency in comparison to a combined cycle plant.

The Facility's HRSGs consist of three major components: the Evaporator, Superheater, and Economizer. The different components are put together to meet the operating requirements of the unit. Modular HRSGs normally consist of three sections: an LP (low pressure) section, a reheat/IP (intermediate pressure) section, and an HP (high pressure) section. The reheat and IP sections are separate circuits inside the HRSG. The IP steam partly feeds the reheat section. Each section has a steam drum and an evaporator section where water is converted to steam. This steam then passes through superheaters to raise the temperature and pressure past the saturation point.

Pollution Control Percentage Calculation: Avoided Emissions Approach

To calculate the percentage of the equipment or category deemed to be pollution control equipment, the Avoided Emissions approach has been used. This approach relies on thermal output differences between conventional electric power and steam generation equipment and the cogeneration system at the Facility. Specifically, the percentage is determined by calculating the displacement of emissions associated with the Facility's thermal output and subtracting these emissions from a baseline emission rate. These displaced emissions are emissions that would have been generated by the same thermal output from conventional equipment.

Greater energy efficiency reduces all air contaminant emissions, including the

greenhouse gas, carbon dioxide. Higher efficiency processes include cogeneration, combined-cycle, and CHP generation. For electric generation the energy efficiency of the process expressed in terms of British thermal units ("BTU's") per Kilowatt-hour ("kWh"). Lower fuel consumption associated with increased fuel conversion efficiency reduces emissions across the board – that is NOx, SOx, particulate matter, hazardous air pollutants, and greenhouse gas emissions such as CO2.

In calculating the percent exempt for the listed items from the ECL-Part B, we utilized Output-Based NOx allocation method for both power generation projects that replaced existing facilities and "Greenfield" steam generation facilities. We looked at the various fossil fuel technologies in use today and chose the baseline electric power generation facility to be a natural gas-fired turbine driven generator without waste heat recovery. The construction of the Blackhawk station and its ability to produce steam replaced some of the steam production generated by the boiler steam plant located at the Wood River Borger Refinery. With this in mind the baseline steam generation facility selected is a gas-fired industrial steam boiler operated without the thermal benefit of waste heat recovery similar to the equipment operated by the refinery. We benchmarked this conventional generation to the subject natural gas-fired cogeneration equipment at the Facility. By doing so, we narrowed the heat rate factors as much as possible to be conservative and uniform in modeling. The benchmark heat rate factor is the following:

Natural Gas-Fired Turbine and Industrial Steam Boiler: 8,864 BTU's/kWh

This baseline heat rate purposely omits other fossil fuel sources in order to eliminate impurity type characteristics, which in turn eliminated the NOx emission and cost of control differences of each fossil fuel and generator type. Comparing the emissions impact of different energy generation facilities is concise when emissions are measured per unit of useful energy output. For the purpose of our calculations, we converted the energy output of the steam to units of kWh, and compared the total emission rate to the baseline facility.

The comparison steps to calculate the NOx reduction is as follows:

Calculation (Reference Schedule A)

Step 1 – Subject Output-Based Limit Calculation (lbs NOx / MWh)

(Input-based Limit (lbs NOx/MMBTU)) X (Heat Rate (Btu/kWh)) / (1,000,000 Btu / 1,000 kWh) = Output: (lbs NOx/MWh),

Step 2 – Subject Output Conversion Calculation (NOx Tons / Year)

(Output (lbs NOx/MWh) X (Unit Design Capacity (MW)) X (Capacity Factor) X ((365 Days) X (24 hrs/day)) / 2,000 lbs = Output: (NOx Tons/Year)

Step 3 – Baseline Output-Based Limit Calculation (lbs NOx / MWh)

(Input-based Limit (lbs NOx/MWh)) X (Heat Rate (Btu/kWh)) / (1,000,000 Btu / 1,000 kWh) = Output: (lbs NOx/MWh)

Step 4 – Baseline Output Conversion Calculation (NOx Tons / Year)

(Output (lbs NOx/MMBtu) X (Unit Design Capacity (MW)) X (Capacity Factor) X ((365 Days) X (24 hrs/day)) / 2,000 lbs = Output: (NOx Tons/Year)

Step 5 – Percent NOx Reduction Calculation

$((\text{Output Baseline})_{\text{step 4}} - (\text{Output Subject})_{\text{step 2}}) / (\text{Output Subject})_{\text{step 2}} = \%$ Reduction Output Subject

Step 6 – Percent Exempt Calculation

(Total Subject Facility Cost) X (% NOx Reduction) = Capital Cost of NOx Avoidance

Step 7 – Percent Exempt Calculation

Total Cost of NOx Avoidance / Total Cost of HB 3732 Equipment = % Exempt

- If % Exempt is greater than 100% HB 3732 Equipment is 100% Exempt
- If % Exempt is less than 100% then HB 3732 Equipment is partially exempt at the Step 6 calculation.

NOTE: See the attached calculation sheet for the details regarding Facility-specific calculations and property tax exemption percentage results based upon these calculations.

REFERENCES

1. "Output-Based Regulations: A Handbook for Air Regulators", U.S. Environmental Protection Agency, Office of Atmospheric Programs – Climate Protection Partnerships Division, August, 2004, p.4.

2. "Output-Based Emissions Standards; Advancing Innovative Energy Technologies", Northeast-Midwest Institute; 2003, p. 9.

3. IBID, p.13.

4."Output-Based Regulations: A Handbook for Air Regulators", U.S. Environmental Protection Agency, Office of Atmospheric Programs – Climate Protection Partnerships Division, August, 2004, p.4.

5. http://www.cogeneration.net/Combined_Cycle_Power_Plants.htm

6. "Output-Based Emissions Standards; Advancing Innovative Energy Technologies", Northeast-Midwest Institute; 2003, p. 9.

9. PARTIAL PERCENTAGE CALCULATION

N/A.

10. PROPERTY CATEGORIES AND COSTS

See attached Schedule 10.

11. EMISSION REDUCTION INCENTIVE GRANT

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

[ ] Yes [X] No

12. 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 written notice.

13. FORMAL REQUEST FOR SIGNATURE

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

NAME: Donna Degan DATE: 3/27/08

TITLE: Vice President

COMPANY: Duff & Phelps LLC

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.

14. DELINQUENT FEE/PENALTY PROTOCOL

This form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol. (Effective 9/1/2006)

Blackhawk Station
119 N. Spur Co-Gen Place
TCEQ Use Determination Application - 2008
Schedule 10
Tier IV

10. PROPERTY CATEGORIES AND COST

PROPERTY	PROJECT ID. NO.	IN SERVICE DATE	TAXABLE ON OR BEFORE 1/1/94? (Y / N)	TIER IV DECISION FLOW CHART BOX	ECL NUMBER	ESTIMATED PURCHASE COST	% EXEMPT	EXEMPT COST
Heat Recovery Steam Generators (HRSG)	1	1998	N	3	B-8	$13,906,514	100%	$13,906,514
					Tier IV Total	$13,906,514		$13,906,514

Burger Energy Associates LP
Blackhawk Station
Schedule A - 2009 Thermal Efficiency Calculation

Subject Details:

Average Heat Rate[1]	7,781 (Btu/kWh)
NOx Emissions[2]	15 ppm
Plant Capacity[3]	225 MW
Capacity Factor[4]	78.50%
Technology[5]	Cogeneration
Total Subject Facility Cost[6]	$128,687,174
Total Cost of Tier IV Equipment[7]	$13,906,514

Baseline Details:

Average Heat Rate[8]	8,864 Btu/kWh
Technology[9]	Industrial Steam Boiler

STEP 1
Subject Output-Based Limit Calculation (lbs NOx/MWh)

Input-based Limit (lbs NOx/MMBtu)	x	Heat Rate (Btu/kWh)	/	Unit Conversions (1,000,000 Btu / 1000 kWh)	=	Output-based Limit (lbs NOX/MWh)
0.0551		7,781		1,000		0.4287

STEP 2
Subject Output Conversion Calculation (NOx Tons / Year)

Output-based Limit (lbs NOx/MWh)	x	Capacity (MW)	x	Capacity Factor	x	Unit Conversions (365 days * 24 Hours / 2,000 lbs)	=	Output NOx (Tons/Year)
0.4287		225		78.50%		4		302.9

STEP 3
Baseline Output-Based Limit Calculation (lbs NOx/MWh)

Input-based Limit (lbs NOx/MMBtu)	x	Heat Rate (Btu/kWh)	/	Unit Conversions (1,000,000 Btu / 1000 kWh)	=	Output-based Limit (lbs NOx/MWh)
0.0551		8,864		1,000		0.4884

STEP 4
Baseline Output Conversion Calculation (NOx Tons / Year)

Output-based Limit (lbs NOx/MWh)	x	Capacity (MW)	x	Capacity Factor	x	Unit Conversions (365 days * 24 Hours / 2,000 lbs)	=	Output NOx (Tons/Year)
0.4884		225		78.50%		4		345.1

STEP 5
Percent NOx Reduction Calculation

(Output Baseline 345.1	x	Output Subject) 302.9	/	Output Subject 302.9	=	% NOx Reduction 13.9%

STEP 6
Percent Exempt Calculation

Total Subject Unit Cost $128,687,174	x	% NOx Reduction 13.9%	=	Capital Cost of NOx Avoidance $17,887,517

STEP 7
Percent Exempt Calculation

Total Cost of NOx Avoidance $17,887,517	/	Total Cost of HB 3732 Equipment $13,906,514	=	% Exempt 128.6%

Conclude	100%

(1) - Heat rate represents plant actual heat rate (HHV) based on the energy value of the electricity and steam generated provided by the client
(2) - NOx emissions is the actual NOx pollutant produce in ppm and was provided by the client
(3) - Plant capacity is the average nominal capacity and was provided by the client
(4) - Capacity factor represent an average annual capacity factor and was provided by the client
(5) - Technology represents the actual technology of the subject
(6) - Total subject facility cost represents the total cost to build the entire facility and it was determined based on data provide by the client
(7) - Total Tier IV equipment was determined by allocating the eligible TCEQ ECL pan B equipment and their associated cost from actual data provide by the client
(8) - Baseline heat rate was developed using a combination of simple cycle electric power and stand alone industrial boiler steam generation
(9) - Baseline technology represents the boiler technology used by the host refinery for steam production. Steam produced by the subject cogeneration facility has displaced some of the steam produced by the host refinery resulting in less fuel consumption by the refinery's boiler equipment and lower overall NOx emissions

DUFF & PHELPS

Dennis Deegear
Vice President
Phone:(512) 671-5523
dennis.deegear@duffandphelps.com

March 26, 2008

TCEQ - Cashiers Office MC-214
Building A
12100 Park 35 Circle
Austin, Texas 78753

Subject: Application for Use Determination for Pollution Control Property
Blackhawk Station - 119 N. Spur Co-Gen Place Borger, TX 79008

Enclosed please find one application (the "Application") for property tax exemptions for certain qualifying pollution control property at the Blackhawk Station Project (the "Facility") in Hutchinson County, Texas.

Pursuant to Title 30 of Chapter 17 of the Texas Administrative Code, the Application has been prepared using the Texas Commission on Environmental Quality ("TCEQ") Application for Use Determination for Pollution Control Property. The enclosed application is a Tier IV Application.

Submission of this Application is required as a process step in the TCEQ's pollution control certification process for tax exemption of certain assets used in pollution control capacities within the Facility. As outlined by the application instructions, the fee for this Tier IV Application is $500. Enclosed please find a check for $500 for the Application processing.

The Application can be summarized as follows:

Property	Description	Estimated Cost
Tier IV	See Attached Schedule	$13,906,514

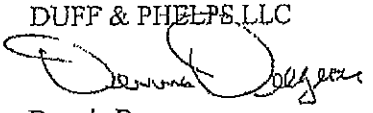
Please send one copy of the completed property tax exemption Use Determination to the following address:

Duff and Phelps LLC
c/o Dennis Deegear
919 Congress Ave.
Suite 1450
Austin, TX 78701

If you have any questions regarding the Application or the information supplied with these Application, please contact Dennis Deegear of Duff & Phelps, LLC at (512) 671-5523 or e-mail at dennis.deegear@duffandphelps.com.

Very truly yours,

DUFF & PHELPS, LLC

Signature: 

Name: Dennis Deegear

Title: Vice President

Enclosures

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 1, 2008

CHIEF APPRAISER
HUTCHINSON COUNTY APPRAISAL DISTRICT
PO BOX 5065
BORGER, TX 79008

This letter is to inform you that on 5/1/2008, a final determination was issued with regard to Use Determination application 07-11971, filed by:

BORGER ENERGY ASSOCIATES LP
BORGER ENERGY BLACKHAWK STATION
119 N. SPUR CO-GEN PLACE
BORGER, TX 79008

A copy of the use determination is included with this letter. 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.

In order to qualify for a tax exemption, the applicant must file an exemption request with your appraisal district. This exemption request must be accompanied by a copy of the positive use determination issued by the TCEQ. If you have any questions regarding this Use Determination or the appeals process, please call me at 512/239-3100.

Sincerely,

David Greer
Team Leader, Pollution Prevention

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 1, 2008

DUFF & PHELPS LLC
DENNIS DEEGEAR
919 CONGRESS #1450
AUSTIN, TX 78701

This letter is to inform you that on 5/1/2008, the technical review of Use Determination Application 07-11971 was completed. This application is for:

BORGER ENERGY ASSOCIATES LP
BORGER ENERGY BLACKHAWK STATION
119 N. SPUR CO-GEN PLACE
BORGER, TX 79008

The use determination is included with this letter. In order to request an exemption, a copy of this Use Determination, along with a completed exemption request form #50-248 (can be found at www.cpa.state.tx.us), must be provided to the Chief Appraiser of the appropriate appraisal district. This request must be made by April 30.

House Bill 3121, enacted during the 77th Legislative 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 Tax Relief for Pollution Control Property Program at (512) 239-3100.

Sincerely,

David Greer
Team Leader, Pollution Prevention

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11971, filed by:

BORGER ENERGY ASSOCIATES LP
BORGER ENERGY BLACKHAWK STATION
119 N. SPUR CO-GEN PLACE
BORGER TX 79008

The pollution control property/project listed in the Use Determination Application is:

This facility has two thermally efficient heat recovery steam generators (HRSGs). This application is a Tier IV application seeking a partial use determination for the two HRSGs.

The outcome of the review is:

A 100% positive use determination for the two Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

Executive Director

May 1, 2008
Date

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 31, 2008

CHIEF APPRAISER
HUTCHINSON COUNTY APPRAISAL DISTRICT
PO BOX 5065
BORGER TX 79008

This letter is to inform you that a Use Determination Application has been filed by:

BORGER ENERGY ASSOCIATES LP

for:

BORGER ENERGY BLACKHAWK STATION
119 N. SPUR CO-GEN PLACE
BORGER TX 79008-

Appraisal District Account Number: 990(1000, 1010, 1100, 1120ETC

This facility is located in HUTCHINSON County.

A complete copy of the application is included with this letter. We recommend that a copy of this application be shared with the person who conducts the appraisal of this property.

This application has been assigned a tracking number of 07 -11971. Please contact the Tax Relief for Pollution Control Property Program at (512) 239-3100 if you have any questions.

Sincerely,

Ron Hatlett
Tax Relief for Pollution Control Property Program

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 8, 2008

DUFF & PHELPS LLC
DENNIS DEEGEAR
919 CONGRESS #1450
AUSTIN TX 78701 -

This letter is to inform you that on 4/8/2008, Use Determination Application, 07-11971 (self assigned tracking number DPBLACKHAWK B), was declared to be administratively complete. This application was filed for the following facility:

BORGER ENERGY BLACKHAWK STATION
119 N. SPUR CO-GEN PLACE
BORGER TX 79008

The next step in the Use Determination Application process is the technical review of the application. If this is a Tier I, II, or III application the technical review will be completed within sixty days of the administrative complete date. If this is a Tier IV application the technical review will be completed within 30 days of the administrative complete date. If additional technical information is required a notice of deficiency letter (NOD) will be issued. The time period between the issuance of the NOD and the receipt of the response is not counted in determinating the length of the technical review .The TCEQ will notify you after the technical review has been completed. In accordance with the statute, the TCEQ has mailed a notice of receipt of this Use Determination Application to the HUTCHINSON County Appraisal District. Please contact the Tax Relief for Pollution Control Property Program at (512) 239-3100 if you have any questions.

Sincerely,

Ron Hatlett
Tax Relief for Pollution Control Property Program

TAX RELIEF FOR POLLUTION CONTROL PROPERTY: TECHNICAL REVIEW DOCUMENT

Reviewed By: RLH App. No.: 07 - 11971 Review Start Date: 4/8/2008

Company Name: BORGER ENERGY ASSOCIATES LP
Facility Name: BORGER ENERGY BLACKHAWK STATION
County: HUTCHINSON Outstanding Fees: N
Batch/Voucher Number:B500156

ADMINISTRATIVE REVIEW

Administrative Complete Date:4/8/2008

TIER LEVEL
What Tier is this application? The application was filed as a Tier IV application. Is this the appropriate level?

The property listed on this application, Heat Recovery Steam Generators, is item B8 on the Equipment and Categories List. This application was filed as a Tier IV. Tier IV is the appropriate level for this application.

RELEVANT RULE, REGULATION, OR STATUTORY PROVISION
The rule listed in the application is: 40 CFR 60.44Da
The appropriate rule is: 40 CFR 60.44Da

Explain why this is the appropriate rule?

40 CFR 60.Subpart DA: Standards of Performance for New Stationary Sources. Standards of performance for Electric Utility Steam Generating Units for Which Construction is Commenced after September 18, 1978. This is an appropriate rule.

BRIEF DESCRIPTION OF PROPERTY
The property is described as:

This facility has two thermally efficient heat recovery steam generators (HRSGs). This application is a Tier IV application seeking a partial use determination for the two HRSGs.

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?

An adequate description of the property was provided, and the purpose of the property was listed. The anticipated environmental benefit is listed. Sketches and flow diagrams were provided.

DECISION FLOWCHART(30 TAC 17.15(a))
Mark the appropriate boxes: Box 3 Box 5 Box 6(IV) Y Box 10(III) Box 12(I) Box 13(II)
PART B DECISION FLOWCHART (17.15(b))
Mark the appropriate boxes: Box 1Y Box 2 Y Box 3 Y

Describe how the property flowed through the Decision Flowchart:

Since the property is listed on Part B of the Equipment & Categories List this property leaves the Decision Flow Chart at Box 6. It passes through Box 1 of the Part B Decision Flow Chart with a yes answer. The use of this property at a combined cycle plant, as opposed to having a simple cycle plant, provides an environmental benefit of reduced NOx emissions at the site. So there is a

Yes answer for Box 2. Since there is a reduction in NOx emissions there is an environmental rule which is being met so there is a yes answer to Box 3.

TIER III or IV APPLICATIONS

Does your calculation agree with the applicants?

No. The application contains a proposed formula for calculating the pollution control value of the HRSGs and the steam turbine. The formula is outcome determinative, and its focus is not on the pollution control aspect of the property. The Executive Director disagrees with this formula.

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.

The table was completed correctly. The applicant certified that all listed property became taxable for the first time after January 1, 1994. All the information necessary for conducting the technical review was included on the application.

TECHNICAL DEFICIENCIES

Is the application complete as received: Y If the application was not administratively complete explain below when justifying the final decision in the final determination section. If the application was not technically complete then:

Provide the language to be used in the Notice of Deficiency (NOD) letter:

Summarize the NOD response:

Provide the language used in the second NOD letter:

Summarize the second NOD response:

Provide the language used in the thied NOD letter:

Summarize the third NOD response:

FINAL DETERMINATION

If the property description has been summarized enter the detailed property description:

This facility has two thermally efficient heat recovery steam generators (HRSGs). This application is a Tier IV application seeking a partial use determination for the two HRSGs.

Provide the reason for your final determination:

The Heat Recovery Steam Generators meet all of the requirements of Chapter 17. A positive use determination based on the most appropriate formula should be issued for the Heat Recovery Steam Generators. The most appropriate formula has been determined by the Executive Director.

Provide the language for the final determination.

A positive use determination of 100% for the two Heat Recovery Steam Generators.

Highlight the required signatures and establish the appropriate due dates.

Reviewed: Ronald Ruthkosky **Date Signed:** 5/1/8

Peer Reviewed: Larry W. Arthur **Date Signed:** 5-1-08

Team Leader: [signature] **Date Signed:** 5/1/08

Section Manager: [signature] **Date Signed:** MAY 1 2008

Division Director: [signature] **Date Signed:** MAY 1 2008

Executive Director's Exhibit 4

Brazos: Application and Use Determination Documents

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 MAY 23 AM 8:43

CHIEF CLERKS OFFICE

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

The TCEQ has the responsibility to determine whether a property is a pollution control property. A person 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 Tax Relief for Pollution Control Property Program at (512) 239-3100. The application should be completed and mailed, along with a complete copy and 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
- ☐ 1,000 to 1,999
- ☐ 100 to 499
- ☐ 2,000 to 4,999
- ☐ 500 to 999
- ☐ 5,000 or more

C. Business Description: **Electric Power Generation**

2. TYPE OF APPLICATION

- ☐ **Tier I $150 Application Fee**
- ☐ **Tier II $1,000 Application Fee**
- ☐ **Tier III $2,500 Application Fee**
- ☑ **Tier IV $500 Application Fee**

NOTE: Enclose a check, money order to the TCEQ, or a copy of the ePay receipt along with the applicaton to cover the required fee.

3. NAME OF APPLICANT

A. Company Name: Brazos Valley Energy L.P.

B. Mailing Address (Street or P.O. Box): 717 Texas, Ste. 1000

C. City, State, ZIP: Houston, TX 77002

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

A. Name of facility: Brazos Valley Energy

B. Type of Mfg Process or Service: Electric Power Generation

C. Street Address: 3440 Lockwood Road

D. City, State, ZIP: Richmond, Texas 77469

E. Tracking Number Assigned by Applicant: DPBrazosValley B

F. Customer Number or Regulated Entity Number: N/A

5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY

A. Name of Appraisal District: Fort Bend

B. Appraisal District Account Number: 0348-00-000-0203-901; 0348-00-000-0204-901;

AE 6-85

6. CONTACT NAME (must be provided)

A. Company/Organization Name:	Duff and Phelps LLC	
B. Name of Individual to Contact:	Greg Maxim	
C. Mailing Address:	919 Congress Ave.	Suite 1450
D. City, State, ZIP:	Austin, TX 78701	
E. Telephone number and fax number:	(512) 671-5580	Fax (512) 671-5501
F. E-Mail address (if available):	gregory.maxim@duffandphelps.com	

7. RELEVANT RULE, REGULATION, OR STATUTORY PROVISION

Please reference Section 8. Each item is detailed with the proper statute, regulation, or environmental regulatory provision.

8. DESCRIPTION OF PROPERTY

Background

The Brazos Valley Power Plant is located in Richmond, Texas. Two combustion turbines are routed to two heat recovery steam generators which provide steam to one steam turbine. The Brazos Valley Power Plant sells the power it generates to Calpine Commercial Operations. The facility is located in Richmond, TX and has been in operation since May 2003. The facility has a baseload capacity of 508 megawatts and is 100 percent owned by Calpine. The technology employed is a natural gas-fired, combined-cycle GE combustion and steam turbines. Brazos Valley Power Plant serves the ERCOT region.

Overview of Combined Cycle Technology

The Facility is a combined-cycle gas turbine power plant consisting of gas Combustion Turbines ("CTs") equipped with heat recovery steam generators to capture heat from the gas turbine exhaust. Steam produced in the heat recovery steam generators powers a steam turbine generator(s) to produce additional electric power. The use of otherwise wasted heat in the turbine exhaust gas results in higher plant thermal efficiency compared to other power generation technologies. Combined-cycle plants currently entering service can convert over 50% of the chemical energy of natural gas into electricity (HHV basis). Employment of the Brayton Thermodynamic Cycle (Gas Turbine Cycle) in combination with the Rankine Thermodynamic Cycle results in the improved efficiency.

The Rankine cycle is a thermodynamic cycle that converts heat from an external source into work. In a Rankine cycle, external heat from an outside source is provided to a fluid in a closed-loop system. This fluid, once pressurized, converts the heat into work output using a turbine. The fluid most often used in a Rankine cycle is water (steam) due to its favorable properties, such as nontoxic and unreactive chemistry, abundance, and low cost, as well as its thermodynamic properties. The thermal efficiency of a Rankine cycle is usually limited by the working fluid. Without pressure reaching super critical the temperature range the Rankine cycle can operate over is quite small, turbine entry temperatures are

typically 565°C (the creep limit of stainless steel) and condenser temperatures are around 30°C. Traditional coal fired and natural gas fired Rankine cycle power generation plants are limited by the inlet pressures and temperatures of the steam turbine design and the condenser vacuum and temperature. The Rankine cycle can achieve thermodynamic cycle efficiency (useful work obtained as a percentage of fuel input) ranging from 33% to 36%. However, if the Rankine cycle is used in conjunction with or as the "bottoming" cycle to the Brayton cycle the efficiencies can be improved as discussed below. This low turbine entry temperature (compared with a gas turbine) is why the Rankine cycle is often used as a bottoming cycle in combined cycle gas turbine power stations.

The Brayton cycle is a constant pressure thermodynamic cycle that converts heat from combustion into work. A Brayton engine, as it applies to a gas turbine system, will consist of a fuel or gas compressor, combustion chamber, and an expansion turbine. Air is drawn into the compressor, mixed with the fuel, and ignited. The resulting work output is captured through a pump, cylinder, or turbine. A Brayton engine forms half of a combined cycle system, which combines with a Rankine engine to further increase overall efficiency. Cogeneration systems typically make use of the waste heat from Brayton engines, typically for hot water production or space heating.

By combining both gas and steam cycles, high input temperatures and low output temperatures can be achieved. The efficiency of the cycles are additive, because they are powered by the same fuel source. A combined-cycle plant has a thermodynamic cycle that operates between the gas turbine's high firing temperature and the waste heat temperature from the condensers of the steam cycle. This large range means that the Carnot efficiency of the cycle is high. The actual efficiency, while lower than this is still higher than that of either plant on its own. The thermal efficiency of a combined-cycle power plant is the net power output of the plant divided by the heating value of the fuel. Combined cycle power generation plants that produce only electricity can achieve thermodynamic efficiencies in the range of 53% to 59%, with the normal range being 53% to 56%. Combined cycle power generation plants that produce steam or hot water in conjunction with electric power can improve upon those values by "offsetting" fired boiler operations within adjacent industrial complexes. These facilities are known as combined cycle cogeneration units.

A single-train combined-cycle plant consists of one gas turbine generator, a heat recovery steam generator (HSRG) and a steam turbine generator ("1 x 1" configuration). As an example, an "FA-class" combustion turbine, the most common technology in use for large combined-cycle plants within the state of Texas and other locations throughout the United States, represents a plant with approximately 270 megawatts of capacity. ISO references ambient conditions at 14.7 psia, 59 F, and 60% relative humidity.

See Figure 1 – Standard Combined-Cycle Configuration, below.

It is common to find combined-cycle plants using two or even three gas turbine generators and heat recovery steam generators feeding a single, proportionally larger steam turbine generator. Larger plant sizes result in economies of scale for construction and operation, and designs using multiple combustion turbines provide improved part-load efficiency. A 2 x 1 configuration using FA-class technology will produce about 540 megawatts of capacity at International Organization for Standardization ("ISO") conditions. ISO references ambient conditions at 14.7 psia, 59 F, and 60% relative humidity.

Because of high thermal efficiency, high reliability, and lower air emissions, combined-cycle gas turbines have been the new resource of choice for bulk power generation for well over a decade. Other attractive features include significant operational flexibility, the availability of relatively inexpensive power augmentation for peak period operation and relatively low carbon dioxide production.

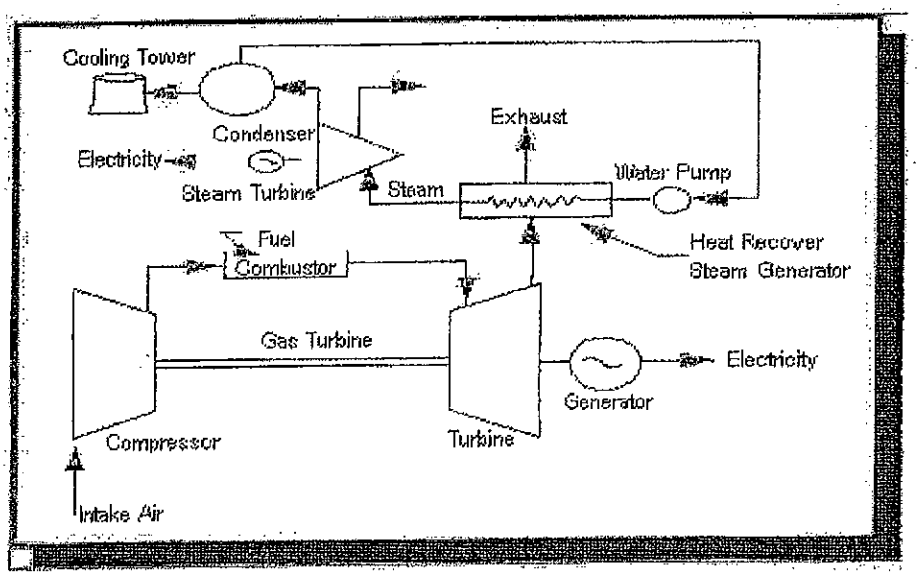


FIGURE 1 - Standard Combined-Cycle Configuration (1)

As an example, consider a gas turbine cycle that has an efficiency of 40%, which is a representative value for current Brayton Cycle gas turbines, and the Rankine Cycle has an efficiency of 30%. The combined-cycle efficiency would be 58%, which is a very large increase over either of the two simple cycles. Some representative efficiencies and power outputs for different cycles are shown in Figure 2 – Comparison of Efficiency and Power Output of Various Power Products, below.

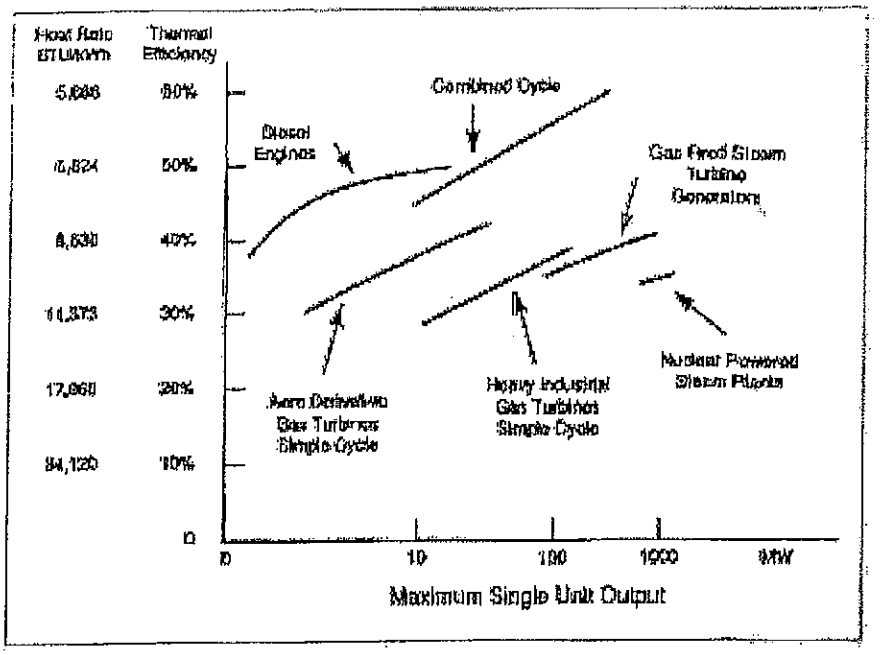


FIGURE 2 - Comparison of efficiency and power output of various power products [Bartol (1997)] (2)

Current Regulatory Authority for Output-Based Emissions

Innovative power technologies such as combined-cycle technology offer enormous potential to improve efficiency and enhance the environmental footprint of power generation through the reduction and/or prevention of air emissions to the environment. Currently, two thirds of the fuel burned to generate electricity in traditional fossil-fired steam boilers is lost. Traditional U.S. power generation facility efficiencies have not increased since the 1950s and more than one fifth of the U.S. power plants are more than 50 years old.(6) In addition, these facilities are the leading contributors to U.S. emissions of carbon dioxide, NOx, sulfur dioxide ("SO2"), and other contaminants into the air and water.

The ability to recognize and regulate the efficiency benefits of pollution reduction and/or prevention through the use of combined-cycle technology is achieved through the use of Output-Based emissions standards, incorporated since September 1998 within the U.S. EPA's new source performance standards ("NSPS") for NOx, from both new utility boilers and new industrial boilers. Pursuant to section 407(c) of the Clean Air Act in subpart Da (Electric Utility Steam Generating Units) and subpart Db (Industrial-Commercial-Institutional Steam Generating Units) of 40 CFR part 60, the U.S. EPA revised the NOx emissions limits for steam generating units for which construction, modification, or reconstruction commenced after July 9, 1997 (3). Output-Based regulations are also exemplified by those used in the U.S. EPA's NOx Cap and Trade Program for the NOx State Implementation Plan

("SIP") Call of 1998, which uses units of measure such as lb/MWh generated or lb concentration ("ppm"), which relate to the emissions to the productive output – electrical generation of the process.(4)

The use of innovative technologies such as combined-cycle units reduces fossil fuel use and leads to multi-media reductions in the environmental impacts of the production, processing transportation, and combustion of fossil fuels. In addition, reducing fossil fuel combustion is a pollution prevention measure that reduces emissions of all products of combustion, not just the target pollutant (currently NOx) of a federal regulatory program.

Authority to Expand Pollution Control Equipment & Categories in Texas

Under Texas House Bill 3732 ("HB3732") enacted in 2007, Section 11.31 of the Texas Tax Code is amended to add certain plant equipment and systems to the current list of air, water, or land pollution control devices exempt from property taxation in Texas.

Specifically, the language reads as follows:

SECTION 4. Section 11.31, Tax Code, is amended by adding Subsections (k), (l), and (m) to read as follows:
(k) The Texas Commission on Environmental Quality shall adopt rules establishing a nonexclusive list of facilities, devices, or methods for the control of air, water, or land pollution, which must include:
(1) coal cleaning or refining facilities;
(2) atmospheric or pressurized and bubbling or circulating fluidized bed combustion systems and gasification fluidized bed combustion combined-cycle systems;
(3) ultra-supercritical pulverized coal boilers;
(4) flue gas recirculation components;
(5) syngas purification systems and gas-cleanup units;
(6) enhanced heat recovery systems;
(7) exhaust heat recovery boilers;
(8) heat recovery steam generators;
(9) superheaters and evaporators;
(10) enhanced steam turbine systems;
(11) methanation;
(12) coal combustion or gasification byproduct and coproduct handling, storage, or treatment facilities;
(13) biomass cofiring storage, distribution, and firing systems;
(14) coal cleaning or drying processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology;
(15) oxy-fuel combustion technology, amine or chilled ammonia scrubbing, fuel or emission conversion through the use of catalysts, enhanced scrubbing technology, modified combustion technology such as chemical looping, and cryogenic technology;
(16) if the United States Environmental Protection Agency adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state;
(17) fuel cells generating electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste; and
(18) any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.
(l) The Texas Commission on Environmental Quality by rule shall update the list adopted under Subsection (k) at least once every three years. An item may be removed from the list if the commission finds compelling evidence to support the conclusion that the item does not provide pollution control benefits.
(m) Notwithstanding the other provisions of this section, if the facility, device, or method for the

control of air, water, or land pollution described in an application for an exemption under this section is a facility, device, or method included on the list adopted under Subsection (k), the executive director of the Texas Commission on Environmental Quality, not later than the 30th day after the date of receipt of the information required by Subsections (c)(2) and (3) and without regard to whether the information required by Subsection (c)(1) has been submitted, shall determine that the facility, device, or method described in the application is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution and shall take the actions that are required by Subsection (d) in the event such a determination is made.

Under the TCEQ's recently updated "Tax Relief for Pollution Control Property – Application Instructions and Equipment and Categories List – Effective January 2008", the Equipment and Categories List - Part B ("ECL Part B") is a list of the pollution control property categories adopted and set forth in TTC Sec. 26.045(f). The taxpayer is to supply a pollution control percentage for the equipment listed in Part B via calculations demonstrating pollution control, prevention and/or reductions achieved by the listed equipment or systems.

The following property descriptions outline the environmental purpose, including the anticipated environmental benefit of pollution control additions considered under the Application Instructions' ECL Part B that have been constructed and placed into use at the Facility as of its placed-in-service date, or installed subsequent to in-service since 1994:

Property Descriptions

Item #1 Combined-Cycle Gas Turbine Plant Heat Recovery Steam Generator ("HRSG") and Support Systems Tier IV B-8

40 CFR Part 60 Subparts DA and DB, NOx Limits for Electric Utility Steam Generating Units and Industrial-Commercial-Institutional Steam Generating Units for New Source Performance Standards ("NSPS").

TAC Rule 106.512, Standard Permit for Electric Generating Units (EGU)

NOTE: Permits issued under Texas Clean Air Act's Health & Safety Code Sections 382.011, applies to all electric generating units that emit air contaminants, regardless of size, and it is to reflect Best Available Control Technology ("BACT") for electric generating units on an output basis in pounds of NOx per megawatt hour, adjusted to reflect a simple cycle power plant.

The heat recovery steam generator ("HRSG") found in the Facility is a heat exchanger that recovers heat from a hot gas stream. It produces steam that can be used in a process or used to drive a steam turbine. A common application for an HRSG is in a combined-cycle power station, where hot exhaust from a gas turbine is fed to an HRSG to generate steam which in turn drives a steam turbine. This combination produces electricity in a more thermally efficient manner than either the gas turbine or steam turbine alone.

The Facility's HRSGs consist of three major components: the Evaporator, Superheater, and Economizer. The different components are put together to meet the operating requirements of the unit. Modular HRSGs normally consist of three sections: an LP (low pressure) section, a reheat/IP (intermediate pressure) section, and an HP (high pressure) section. The reheat and IP sections are separate circuits inside the HRSG. The IP steam partly feeds the reheat section. Each section has a steam drum and an evaporator section where water is converted to steam. This steam then passes through superheaters to raise the temperature and pressure past the saturation point.

Item #2 Steam Turbine and Support Systems Tier IV B-10

40 CFR Part 60 Subparts DA and DB, NOx Limits for Electric Utility Steam Generating Units and Industrial-Commercial-Institutional Steam Generating Units for New Source Performance Standards ("NSPS").

TAC Rule 106.512, Standard Permit for Electric Generating Units (EGU)

NOTE: Permits issued under Texas Clean Air Act's Health & Safety Code Sections 382.011, applies to all electric generating units that emit air contaminants, regardless of size, and it is to reflect Best Available Control Technology ("BACT") for electric generating units on an output basis in pounds of NOx per megawatt hour, adjusted to reflect a simple cycle power plant.

The steam turbine(s) found in the Facility operate on the Rankine cycle in combination with the Brayton cycle, as described above. Steam created in the Facility HRSG(s) from waste heat that would have otherwise been lost to the atmosphere enters the steam turbine via a throttle valve, where it powers the turbine

and connected generator to make electricity. Use of HRSG/Steam Turbine System combination provides the Facility with an overall efficiency of greater than 50%. Steam turbine systems similar to the Facility's have a history of achieving up to 95% availability on an annual basis and can operate for more than a year between shutdown for maintenance and inspections. (5)

Pollution Control Percentage Calculation: Avoided Emissions Approach

To calculate the percentage of the equipment or category deemed to be pollution control equipment, the Avoided Emissions approach has been used. This approach relies on thermal output differences between a conventional power generation system and the combined-cycle system at the Facility. Specifically, the percentage is determined by calculating the displacement of emissions associated with the Facility's thermal output and subtracting these emissions from a baseline emission rate. These displaced emissions are emissions that would have been generated by the same thermal output from a conventional system.

Greater energy efficiency reduces all air contaminant emissions, including the greenhouse gas, carbon dioxide. Higher efficiency processes include combined-cycle operation and combined heat and power ("CHP") generation. For electric generation the energy efficiency of the process expressed in terms of millions of British thermal units ("MMBTU's") per Megawatt-hour. Lower fuel consumption associated with increased fuel conversion efficiency reduces emissions across the board -- that is NOx, SOx, particulate matter, hazardous air pollutants, and greenhouse gas emissions such as CO2.

In calculating the percent exempt for the listed items from the ECL-Part B, we utilized Output-Based NOx allocation method for both power generation projects that replaced existing facilities and "Greenfield" power and heat generation facilities. We looked at the various fossil fuel technologies in use today and chose the baseline facility to be a natural gas fuel-fired steam generator. We benchmarked this conventional generation to the subject natural gas-fired combined cycle generator at the Facility. By doing so, we narrowed the heat rate factors as much as possible to be conservative and uniform in modeling. The benchmark heat rate factor is the following:

Natural Gas fuel-fired Steam Generator: 10,490 BTU's/kWh

This baseline heat rate purposely omits other fossil fuel sources in order to eliminate impurity type characteristics, which in turn eliminated the NOx emission and cost of control differences of each fossil fuel and generator type. Comparing the emissions impact of different energy generation facilities is concise when emissions are measured per unit of useful energy output. For the purpose of our calculations, we converted all the energy output to units of MWh (1 MWh = 3.413 MMBTU), and compared the total emission rate to the baseline facility.

The comparison steps to calculate the NOx reduction is as follows:

Calculation (Reference Schedule A)

Step 1 – Subject Output-Based Limit Calculation (lbs NOx / MWh)

(Input-based Limit (lbs NOx/MMBTU)) X (Heat Rate (Btu/kWh)) / (1,000,000 Btu / 1,000 kWh) = Output: (lbs NOx/MWh),

Step 2 – Subject Output Conversion Calculation (NOx Tons / Year)

(Output (lbs NOx/MWh) X (Unit Design Capacity (MW)) X (Capacity Factor) X ((365 Days) X (24 hrs/day)) / 2,000 lbs = Output: (NOx Tons/Year)

Step 3 – Baseline Output-Based Limit Calculation (lbs NOx / MWh)

(Input-based Limit (lbs NOx/MWh)) X (Heat Rate (Btu/kWh)) / (1,000,000 Btu / 1,000 kWh) = Output: (lbs NOx/MWh)

Step 4 – Baseline Output Conversion Calculation (NOx Tons / Year)

(Output (lbs NOx/MMBtu) X (Unit Design Capacity (MW)) X (Capacity Factor) X ((365 Days) X (24 hrs/day)) / 2,000 lbs = Output: (NOx Tons/Year)

Step 5 – Percent NOx Reduction Calculation

$((\text{Output Baseline})_{\text{step 4}} - (\text{Output Subject})_{\text{step 2}}) / (\text{Output Subject})_{\text{step 2}}$ = % Reduction Output Subject

Step 6 – Percent Exempt Calculation

(Total Subject Facility Cost) X (% NOx Reduction) = Capital Cost of NOx Avoidance

Step 7 – Percent Exempt Calculation

Total Cost of NOx Avoidance / Total Cost of HB 3732 Equipment = % Exempt

- If % Exempt is greater than 100% HB 3732 Equipment is 100% Exempt
- If % Exempt is less than 100% then HB 3732 Equipment is partially exempt at the Step 6 calculation.

NOTE: See the attached calculation sheet for the details regarding Facility-specific calculations and property tax exemption percentage results based upon these calculations.

REFERENCES

1. "Output-Based Regulations: A Handbook for Air Regulators", U.S. Environmental Protection Agency, Office of Atmospheric Programs – Climate Protection Partnerships Division, August, 2004, p.4.

2. "Output-Based Emissions Standards; Advancing Innovative Energy Technologies", Northeast-Midwest Institute; 2003, p. 9.

3. IBID, p.13.

4."Output-Based Regulations: A Handbook for Air Regulators", U.S. Environmental Protection Agency, Office of Atmospheric Programs – Climate Protection Partnerships Division, August, 2004, p.4.

5. http://www.cogeneration.net/Combined_Cycle_Power_Plants.htm

6. "Output-Based Emissions Standards; Advancing Innovative Energy Technologies", Northeast-Midwest Institute; 2003, p. 9.

9. PARTIAL PERCENTAGE CALCULATION

N/A.

10. PROPERTY CATEGORIES AND COSTS

See attached Schedule 10.

11. EMISSION REDUCTION INCENTIVE GRANT

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

[ ] Yes [X] No

12. 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 written notice.

13. 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: 25 MARCH 2008

TITLE: Director

COMPANY: Duff & Phelps LLC

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.

14. DELINQUENT FEE/PENALTY PROTOCOL

This form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol. (Effective 9/1/2006)

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 1, 2008

CHIEF APPRAISER
BRAZORIA COUNTY APPRAISAL DISTRICT
500 N CHENANGO ST
ANGLETON, TX 77515

This letter is to inform you that on 5/1/2008, a final determination was issued with regard to Use Determination application 07-11994, filed by:

FREEPORT ENERGY CENTER LP
FREEPORT ENERGY CENTER LP
2301 N BRAZOSPORT BLVD
FREEPORT, TX 77451

A copy of the use determination is included with this letter. 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.

In order to qualify for a tax exemption, the applicant must file an exemption request with your appraisal district. This exemption request must be accompanied by a copy of the positive use determination issued by the TCEQ. If you have any questions regarding this Use Determination or the appeals process, please call me at 512/239-3100.

Sincerely,

David Greer
Team Leader, Pollution Prevention

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 1, 2008

CALPINE/DOW
JUSTIN HYLAND/LEO SCHERRER
717 TEXAS AVE
HOUSTON, TX 77002

This letter is to inform you that on 5/1/2008, the technical review of Use Determination Application 07-11994 was completed. This application is for:

FREEPORT ENERGY CENTER LP
FREEPORT ENERGY CENTER LP
2301 N BRAZOSPORT BLVD
FREEPORT, TX 77451

The use determination is included with this letter. In order to request an exemption, a copy of this Use Determination, along with a completed exemption request form #50-248 (can be found at www.cpa.state.tx.us), must be provided to the Chief Appraiser of the appropriate appraisal district. This request must be made by April 30.

House Bill 3121, enacted during the 77th Legislative 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 Tax Relief for Pollution Control Property Program at (512) 239-3100.

Sincerely,

David Greer
Team Leader, Pollution Prevention

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11994, filed by:

FREEPORT ENERGY CENTER LP
FREEPORT ENERGY CENTER LP
2301 N BRAZOSPORT BLVD
FREEPORT TX 77451

The pollution control property/project listed in the Use Determination Application is:

This facility has thermally efficient heat recovery steam generators (HRSGs) and steam turbines. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbines. The use of the steam turbines does not provide an environmental benefit at the site. The steam turbines are not considered to be pollution control equipment.

Executive Director

May 2 2008
Date

TAX RELIEF FOR POLLUTION CONTROL PROPERTY: TECHNICAL REVIEW DOCUMENT

Reviewed By: RLH App. No.: 07 - 11994 Review Start Date: 4/8/2008

Company Name: FREEPORT ENERGY CENTER LP
Facility Name: FREEPORT ENERGY CENTER LP
County: BRAZORIA Outstanding Fees: N
Batch/Voucher Number:B500289

ADMINISTRATIVE REVIEW

Administrative Complete Date:4/8/2008

TIER LEVEL
What Tier is this application? The application was filed as a Tier IV application. Is this the appropriate level?

The property listed on this application, Heat Recovery Steam Generators and a steam turbine are items B8 and B10 on the Equipment and Categories List. This application was filed as a Tier IV. Tier IV is the appropriate level for this application.

RELEVANT RULE, REGULATION, OR STATUTORY PROVISION
The rule listed in the application is: 40 CFR 60.44Da
The appropriate rule is: 40 CFR 60.44Da

Explain why this is the appropriate rule?

40 CFR 60.Subpart DA: Standards of Performance for New Stationary Sources. Standards of performance for Electric Utility Steam Generating Units for Which Construction is Commenced after September 18, 1978. This is an appropriate rule.

BRIEF DESCRIPTION OF PROPERTY
The property is described as:

This facility has thermally efficient heat recovery steam generators (HRSGs) and steam turbines. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

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?

An adequate description of the property was provided. and the purpose of the property was listed. The anticipated environmental benefit is listed. Sketches and flow diagrams were provided.

DECISION FLOWCHART(30 TAC 17.15(a))
Mark the appropriate boxes: Box 3 Box 5 Box 6(IV) Y Box 10(III) Box 12(I) Box 13(II)
PART B DECISION FLOWCHART (17.15(b))
Mark the appropriate boxes: Box 1Y Box 2 Y Box 3 Y

Describe how the property flowed through the Decision Flowchart:

Since the property is listed on Part B of the Equipment & Categories List this property leaves the Decision Flow Chart at Box 6. It passes through Box 1 of the Part B Decision Flow Chart with a yes answer. The use of this property at a combined cycle plant, as opposed to having a simple

cycle plant, provides an environmental benefit of reduced NOx emissions at the site. So there is a Yes answer for Box 2, Since there is a reduction in NOx emissions there is an environmental rule which is being met so there is a yes answer to Box 3. The steam turbine passes through Box 1 on the Part B Decision Flow Chart with a yes answer. Since the use of the steam turbine does not provide an environmental benefit at the site a no answer is the result of Box 2. The steam turbine is not eligible for a positive determination.

TIER III or IV APPLICATIONS

Does your calculation agree with the applicants?

No. The application contains a proposed formula for calculating the pollution control value of the HRSGs and the steam turbine. The formula is outcome determinative, and its focus is not on the pollution control aspect of the property. The Executive Director disagrees with this formula.

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.

The table was completed correctly. The applicant certified that all listed property became taxable for the first time after January 1, 1994. All the information necessary for conducting the technical review was included on the application.

TECHNICAL DEFICIENCIES

Is the application complete as received: Y If the application was not administratively complete explain below when justifying the final decision in the final determination section. If the application was not technically complete then:

Provide the language to be used in the Notice of Deficiency (NOD) letter:

Summarize the NOD response:

Provide the language used in the second NOD letter:

Summarize the second NOD response:

Provide the language used in the thied NOD letter:

Summarize the third NOD response:

FINAL DETERMINATION

If the property description has been summarized enter the detailed property description:

This facility has thermally efficient heat recovery steam generators (HRSGs) and steam turbines.

This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

Provide the reason for your final determination:

The Heat Recovery Steam Generators meet all of the requirements of Chapter 17. A positive use determination based on the most appropriate formula should be issued for the Heat Recovery Steam Generators. The most appropriate formula has been determined by the Executive Director. A negative determination should be issued for the steam turbine. The use of the steam turbine does not result in there being an environmental benefit at the site.

Provide the language for the final determination.

A positive use determination of 100% for the Heat Recovery Steam Generators. A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Highlight the required signatures and establish the appropriate due dates.

Reviewed: Date Signed: 5/1/08

Peer Reviewed: Date Signed: 5-1-08

Team Leader: Date Signed: 5/1/08

Section Manager: Date Signed: MAY 1 2008

Division Director: Date Signed: MAY 1 2008

Executive Director's Exhibit 6

Navasota: Application and Use Determination Documents

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 MAY 23 AM 8:43

CHIEF CLERKS OFFICE

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

The TCEQ has the responsibility to determine whether a property is a pollution control property. A person 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 Tax Relief for Pollution Control Property Program at (512) 239-3100. The application should be completed and mailed, along with a complete copy and 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
- ☐ 1,000 to 1,999
- ☐ 100 to 499
- ☐ 2,000 to 4,999
- ☐ 500 to 999
- ☐ 5,000 or more

C. Business Description: **Electricity Manufacturing (SIC 4911)**

2. TYPE OF APPLICATION

- ☐ **Tier I $150 Application Fee**
- ☐ **Tier II $1,000 Application Fee**
- ☐ **Tier III $2,500 Application Fee**
- ☑ **Tier IV $500 Application Fee**

NOTE: Enclose a check, money order to the TCEQ, or a copy of the ePay receipt along with the applicaton to cover the required fee.

3. NAME OF APPLICANT

A. Company Name: Navasota Wharton Energy Partners LP

B. Mailing Address (Street or P.O. Box): 403 Corporate Woods

C. City, State, ZIP: Magnolia, TX 77354

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

A. Name of facility: Colorado Bend

B. Type of Mfg Process or Service: Electricity Manufacturing (SIC 4911)

C. Street Address: 3821 S. State Hwy 60

D. City, State, ZIP: Wharton, TX 77488

E. Tracking Number Assigned by Applicant: DPCOBend B

F. Customer Number or Regulated Entity Number: N/A

5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY

A. Name of Appraisal District: Wharton

B. Appraisal District Account Number: 10258-000-000-00; 10-20500000-0200-67099; 20063-000-055-00

Replacement
AE-12-209

AE 6-104

6. CONTACT NAME (must be provided)

A. Company/Organization Name:	Duff and Phelps LLC	
B. Name of Individual to Contact:	Greg Maxim	
C. Mailing Address:	919 Congress Ave.	Suite 1450
D. City, State, ZIP:	Austin, TX 78701	
E. Telephone number and fax number:	(512) 671-5580	Fax (512) 671-5501
F. E-Mail address (if available):	gregory.maxim@duffandphelps.com	

7. RELEVANT RULE, REGULATION, OR STATUTORY PROVISION

Please reference Section 8. Each item is detailed with the proper statute, regulation, or environmental regulatory provision.

8. DESCRIPTION OF PROPERTY

Background

The Colorado Bend Energy Center (the "Facility"), owned by Navasota Wharton Energy Partners LP, is a combined cycle natural-gas fired power plant located in Wharton, Wharton County, Texas. The Facility is intended to have a total capacity of 825 Mw, built in three phases. Phase has a capacity of 275 Mw and was completed in June of 2007. Phase 2, currently under construction, is to be completed in June of 2008 and will also have a 275 Mw capacity. Each phase consists of 2 GE 7-EA combustion turbine units utilizing the GE Dry Low NOx combustion control system technology, 2 heat recovery steam generating (HRSG) units, and one steam turbine unit. The Facility utilizes a cooling tower within the circulating water system for condenser cooling water needs and condensate return purposes.

Overview of Combined Cycle Technology

The Facility consists of a combined-cycle gas turbine power plant with gas Combustion Turbines ("CTs") equipped with heat recovery steam generators to capture heat from the gas turbine exhaust. Steam produced in the heat recovery steam generators powers a steam turbine generator(s) to produce additional electric power. Use of the otherwise wasted heat in the turbine exhaust gas results in higher plant thermal efficiency compared to other combustion technologies. Combined-cycle plants currently entering service can convert approximately 50% of the chemical energy of natural gas into electricity (HHV basis).

The Rankine cycle is a thermodynamic cycle that converts heat from an external source into work. In a Rankine cycle, external heat from an outside source is provided to a fluid in a closed-loop system. This fluid, once pressurized, converts the heat into work output using a turbine. The fluid most often used in a Rankine cycle is water (steam) due to its favorable properties, such as nontoxic and unreactive chemistry, abundance, and low cost, as well as its thermodynamic properties. The thermal efficiency of a Rankine cycle is usually limited by the working fluid. Without pressure reaching super critical the temperature range the

Rankine cycle can operate over is quite small, turbine entry temperatures are typically 565°C (the creep limit of stainless steel) and condenser temperatures are around 30°C. This gives a theoretical Carnot efficiency of around 63% compared with an actual efficiency of 42% for a modern coal-fired power station. This low turbine entry temperature (compared with a gas turbine) is why the Rankine cycle is often used as a bottoming cycle in combined cycle gas turbine power stations.

The Brayton cycle is a constant pressure thermodynamic cycle that converts heat from combustion into work. A Brayton engine, as it applies to a gas turbine system, will consist of a fuel or gas compressor, combustion chamber, and an expansion turbine. Air is drawn into the compressor, mixed with the fuel, and ignited. The resulting work output is captured through a pump, cylinder, or turbine. A Brayton engine forms half of a combined cycle system, which combines with a Rankine engine to further increase overall efficiency. Cogeneration systems typically make use of the waste heat from Brayton engines, typically for hot water production or space heating.

By combining both gas and steam cycles, high input temperatures and low output temperatures can be achieved. The efficiency of the cycles are additive, because they are powered by the same fuel source. A combined-cycle plant has a thermodynamic cycle that operates between the gas turbine's high firing temperature and the waste heat temperature from the condensers of the steam cycle. This large range means that the Carnot efficiency of the cycle is high. The actual efficiency, while lower than this is still higher than that of either plant on its own. The thermal efficiency of a combined-cycle power plant is the net power output of the plant divided by the heating value of the fuel. If the plant produces only electricity, efficiencies of up to 59% can be achieved.

A single-train combined-cycle plant consists of one gas turbine generator, a heat recovery steam generator (HSRG) and a steam turbine generator ("1 x 1" configuration). As an example, an "FA-class" combustion turbine, the most common technology in use for large combined-cycle plants within the state of Texas and other locations throughout the United States, represents a plant with approximately 270 megawatts of capacity.

See Figure 1 – Standard Combined-Cycle Configuration, below.

It is common to find combined-cycle plants using two or even three gas turbine generators and heat recovery steam generators feeding a single, proportionally larger steam turbine generator. Larger plant sizes result in economies of scale for construction and operation, and designs using multiple combustion turbines provide improved part-load efficiency. A 2 x 1 configuration using FA-class technology will produce about 540 megawatts of capacity at International Organization for Standardization ("ISO") conditions. ISO references ambient conditions at 14.7 psia, 59 F, and 60% relative humidity.

Because of high thermal efficiency, high reliability, and low air emissions,

combined-cycle gas turbines have been the new resource of choice for bulk power generation for well over a decade. Other attractive features include significant operational flexibility, the availability of relatively inexpensive power augmentation for peak period operation and relatively low carbon dioxide production.

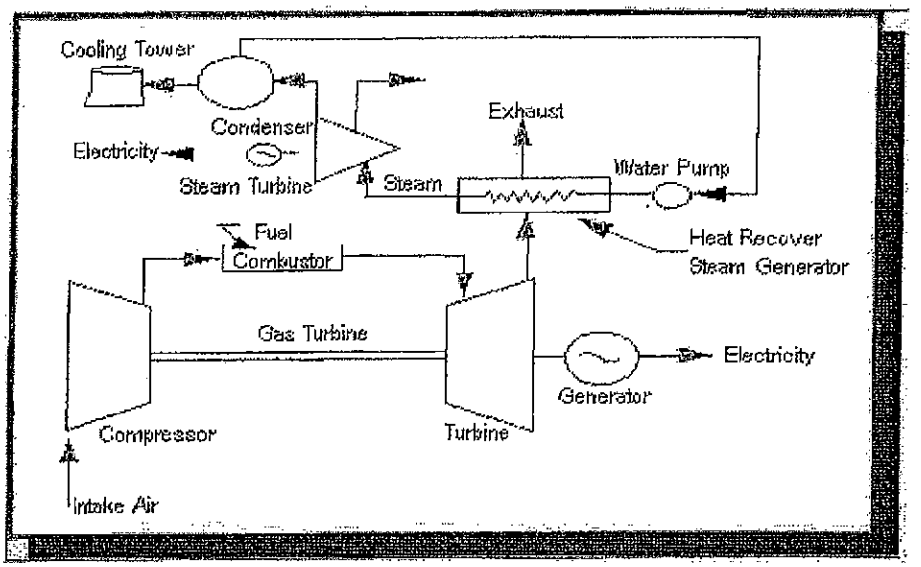


FIGURE 1 - Standard Combined-Cycle Configuration (1)

As an example, consider a gas turbine cycle that has an efficiency of 40%, which is a representative value for current Brayton Cycle gas turbines, and the Rankine Cycle has an efficiency of 30%. The combined-cycle efficiency would be 58%, which is a very large increase over either of the two simple cycles. Some representative efficiencies and power outputs for different cycles are shown in Figure 2 – Comparison of Efficiency and Power Output of Various Power Products, below.

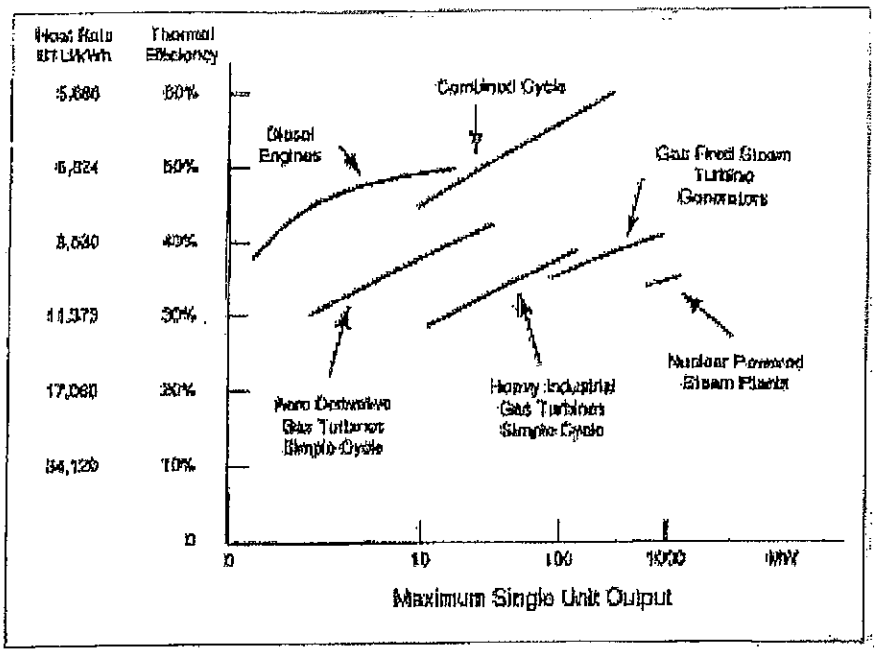


FIGURE 2 - Comparison of efficiency and power output of various power products [Bartol (1997)] (2)

Current Regulatory Authority for Output-Based Emissions

Innovative power technologies such as combined-cycle technology offer enormous potential to improve efficiency and enhance the environmental footprint of power generation through the reduction and/or prevention of air emissions to the environment. Currently, two thirds of the fuel burned to generate electricity in traditional fossil-fired steam boilers is lost. Traditional U.S. power generation facility efficiencies have not increased since the 1950s and more than one fifth of the U.S. power plants are more than 50 years old. In addition, these facilities are the leading contributors to U.S. emissions of carbon dioxide, NOx, sulfur dioxide ("SO2"), and other contaminants into the air and water.

The ability to recognize and regulate the efficiency benefits of pollution reduction and/or prevention through the use of combined-cycle technology is achieved through the use of Output-Based emissions standards, incorporated since September 1998 within the U.S. EPA's new source performance standards ("NSPS") for NOx, from both new utility boilers and new industrial boilers. Pursuant to section 407(c) of the Clean Air Act in subpart Da (Electric Utility Steam Generating Units) and subpart Db (Industrial-Commercial-Institutional Steam Generating Units) of 40 CFR part 60, the U.S. EPA revised the NOx emissions limits for steam generating units for which construction, modification, or reconstruction commenced after July 9, 1997 (3). Output-Based regulations are also exemplified by those used in the U.S. EPA's NOx Cap and Trade Program for the NOx State Implementation Plan ("SIP") Call

of 1998, which uses units of measure such as lb/MWh generated or lb concentration ("ppm"), which relate to the emissions to the productive output – electrical generation of the process.(4)

The use of innovative technologies such as combined-cycle units reduces fossil fuel use and leads to multi-media reductions in the environmental impacts of the production, processing transportation, and combustion of fossil fuels. In addition, reducing fossil fuel combustion is a pollution prevention measure that reduces emissions of all products of combustion, not just the target pollutant (currently NOx) of a federal regulatory program.

Authority to Expand Pollution Control Equipment & Categories in Texas

Under Texas House Bill 3732 ("HB3732") enacted in 2007, Section 11.31 of the Texas Tax Code is amended to add certain plant equipment and systems to the current list of air, water, or land pollution control devices exempt from property taxation in Texas.

Specifically, the language reads as follows:

> *SECTION 4. Section 11.31, Tax Code, is amended by adding Subsections (k), (l), and (m) to read as follows:*
> *(k) The Texas Commission on Environmental Quality shall adopt rules establishing a nonexclusive list of facilities, devices, or methods for the control of air, water, or land pollution, which must include:*
> *(1) coal cleaning or refining facilities;*
> *(2) atmospheric or pressurized and bubbling or circulating fluidized bed combustion systems and gasification fluidized bed combustion combined-cycle systems;*
> *(3) ultra-supercritical pulverized coal boilers;*
> *(4) flue gas recirculation components;*
> *(5) syngas purification systems and gas-cleanup units;*
> *(6) enhanced heat recovery systems;*
> *(7) exhaust heat recovery boilers;*
> *(8) heat recovery steam generators;*
> *(9) superheaters and evaporators;*
> *(10) enhanced steam turbine systems;*
> *(11) methanation;*
> *(12) coal combustion or gasification byproduct and coproduct handling, storage, or treatment facilities;*
> *(13) biomass cofiring storage, distribution, and firing systems;*
> *(14) coal cleaning or drying processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology;*
> *(15) oxy-fuel combustion technology, amine or chilled ammonia scrubbing, fuel or emission conversion through the use of catalysts, enhanced scrubbing technology, modified combustion technology such as chemical looping, and cryogenic technology;*
> *(16) if the United States Environmental Protection Agency adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state;*
> *(17) fuel cells generating electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste; and*
> *(18) any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.*
> *(l) The Texas Commission on Environmental Quality by rule shall update the list adopted under Subsection (k) at least once every three years. An item may be removed from the list if the commission finds compelling evidence to support the conclusion that the item does not provide pollution control benefits.*
> *(m) Notwithstanding the other provisions of this section, if the facility, device, or method for the*

control of air, water, or land pollution described in an application for an exemption under this section is a facility, device, or method included on the list adopted under Subsection (k), the executive director of the Texas Commission on Environmental Quality, not later than the 30th day after the date of receipt of the information required by Subsections (c)(2) and (3) and without regard to whether the information required by Subsection (c)(1) has been submitted, shall determine that the facility, device, or method described in the application is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution and shall take the actions that are required by Subsection (d) in the event such a determination is made.

Under the TCEQ's recently updated "Tax Relief for Pollution Control Property – Application Instructions and Equipment and Categories List – Effective January 2008", the Equipment and Categories List - Part B ("ECL Part B") is a list of the pollution control property categories adopted and set forth in TTC Sec. 26.045(f). The taxpayer is to supply a pollution control percentage for the equipment listed in Part B via calculations demonstrating pollution control, prevention and/or reductions achieved by the listed equipment or systems.

The following property descriptions outline the environmental purpose, including the anticipated environmental benefit of pollution control additions considered under the Application Instructions' ECL Part B that have been constructed and placed into use at the Facility as of its placed-in-service date, or installed subsequent to in-service since 1994:

Property Descriptions

Item #1 & 3 Combined-Cycle Gas Turbine Plant Heat Recovery Steam Generator ("HRSG") and Support Systems Tier IV B-8

40 CFR Part 60 Subparts DA and DB, NOx Limits for Electric Utility Steam Generating Units and Industrial-Commercial-Institutional Steam Generating Units for New Source Performance Standards ("NSPS").

TAC Rule 106.512, Standard Permit for Electric Generating Units (EGU)

NOTE: Permits issued under Texas Clean Air Act's Health & Safety Code Sections 382.011, applies to all electric generating units that emit air contaminants, regardless of size, and it is to reflect Best Available Control Technology ("BACT") for electric generating units on an output basis in pounds of NOx per megawatt hour, adjusted to reflect a simple cycle power plant.

The heat recovery steam generator ("HRSG") found in the Facility is a heat exchanger that recovers heat from a hot gas stream. It produces steam that can be used in a process or used to drive a steam turbine. A common application for an HRSG is in a combined-cycle power station, where hot exhaust from a gas turbine is fed to an HRSG to generate steam which in turn drives a steam turbine. This combination produces electricity in a more thermally efficient manner than either the gas turbine or steam turbine alone.

The Facility's HRSGs consist of three major components: the Evaporator, Superheater, and Economizer. The different components are put together to meet the operating requirements of the unit. Modular HRSGs normally consist of three sections: an LP (low pressure) section, a reheat/IP (intermediate pressure) section, and an HP (high pressure) section. The reheat and IP sections are separate circuits inside the HRSG. The IP steam partly feeds the reheat section. Each section has a steam drum and an evaporator section where water is converted to steam. This steam then passes through superheaters to raise the temperature and pressure past the saturation point.

Item #2 & 4 Steam Turbine and Support Systems Tier IV B-10

40 CFR Part 60 Subparts DA and DB, NOx Limits for Electric Utility Steam Generating Units and Industrial-Commercial-Institutional Steam Generating Units for New Source Performance Standards ("NSPS").

TAC Rule 106.512, Standard Permit for Electric Generating Units (EGU)

NOTE: Permits issued under Texas Clean Air Act's Health & Safety Code Sections 382.011, applies to all electric generating units that emit air contaminants, regardless of size, and it is to reflect Best Available Control Technology ("BACT") for electric generating units on an output basis in pounds of NOx per megawatt hour, adjusted to reflect a simple cycle power plant.

The steam turbine(s) found in the Facility operate on the Rankine cycle in combination with the Brayton cycle, as described above. Steam created in the Facility HRSG(s) from waste heat that would have otherwise been lost to the atmosphere enters the steam turbine via a throttle valve, where it powers the turbine

and connected generator to make electricity. Use of HRSG/Steam Turbine System combination provides the Facility with an overall efficiency of greater than 50%. Steam turbine systems similar to the Facility's have a history of achieving up to 95% availability on an annual basis and can operate for more than a year between shutdown for maintenance and inspections. (5)

Pollution Control Percentage Calculation: Avoided Emissions Approach

To calculate the percentage of the equipment or category deemed to be pollution control equipment, the Avoided Emissions approach has been used. This approach relies on thermal output differences between a conventional power generation system and the combined-cycle system at the Facility. Specifically, the percentage is determined by calculating the displacement of emissions associated with the Facility's thermal output and subtracting these emissions from a baseline emission rate. These displaced emissions are emissions that would have been generated by the same thermal output from a conventional system.

Greater energy efficiency reduces all air contaminant emissions, including the greenhouse gas, carbon dioxide. Higher efficiency processes include combined-cycle operation and combined heat and power ("CHP") generation. For electric generation the energy efficiency of the process expressed in terms of millions of British thermal units ("MMBTU's") per Megawatt-hour. Lower fuel consumption associated with increased fuel conversion efficiency reduces emissions across the board – that is NOx, SOx, particulate matter, hazardous air pollutants, and greenhouse gas emissions such as CO2.

In calculating the percent exempt for the listed items from the ECL-Part B, we utilized Output-Based NOx allocation method for both power generation projects that replaced existing facilities and "Greenfield" power and heat generation facilities. We looked at the various fossil fuel technologies in use today and chose the baseline facility to be a natural gas fuel-fired steam generator. We benchmarked this conventional generation to the subject natural gas-fired combined cycle generator at the Facility. By doing so, we narrowed the heat rate factors as much as possible to be conservative and uniform in modeling. The benchmark heat rate factor is the following:

Natural Gas fuel-fired Steam Generator: 10,490 BTU's/kWh

This baseline heat rate purposely omits other fossil fuel sources in order to eliminate impurity type characteristics, which in turn eliminated the NOx emission and cost of control differences of each fossil fuel and generator type. Comparing the emissions impact of different energy generation facilities is concise when emissions are measured per unit of useful energy output. For the purpose of our calculations, we converted all the energy output to units of MWh (1 MWh = 3.413 MMBTU), and compared the total emission rate to the baseline facility.

The comparison steps to calculate the NOx reduction is as follows:

Calculation (Reference Schedule A)

Step 1 – Subject Output-Based Limit Calculation (lbs NOx / MWh)

(Input-based Limit (lbs NOx/MMBTU)) X (Heat Rate (Btu/kWh)) / (1,000,000 Btu / 1,000 kWh) = Output: (lbs NOx/MWh).

Step 2 – Subject Output Conversion Calculation (NOx Tons / Year)

(Output (lbs NOx/MWh) X (Unit Design Capacity (MW)) X (Capacity Factor) X ((365 Days) X (24 hrs/day)) / 2,000 lbs = Output: (NOx Tons/Year)

Step 3 – Baseline Output-Based Limit Calculation (lbs NOx / MWh)

(Input-based Limit (lbs NOx/MWh)) X (Heat Rate (Btu/kWh)) / (1,000,000 Btu / 1,000 kWh) = Output: (lbs NOx/MWh)

Step 4 – Baseline Output Conversion Calculation (NOx Tons / Year)

(Output (lbs NOx/MMBtu) X (Unit Design Capacity (MW)) X (Capacity Factor) X ((365 Days) X (24 hrs/day)) / 2,000 lbs = Output: (NOx Tons/Year)

Step 5 – Percent NOx Reduction Calculation

$((\text{Output Baseline})_{\text{step 4}} - (\text{Output Subject}))_{\text{step 2}} / (\text{Output Subject})_{\text{step 2}} = \%$ Reduction Output Subject

Step 6 – Percent Exempt Calculation

(Total Subject Facility Cost) X (% NOx Reduction) = Capital Cost of NOx Avoidance

Step 7 – Percent Exempt Calculation

Total Cost of NOx Avoidance / Total Cost of HB 3732 Equipment = % Exempt

- If % Exempt is greater than 100% HB 3732 Equipment is 100% Exempt
- If % Exempt is less than 100% then HB 3732 Equipment is partially exempt at the Step 6 calculation.

NOTE: See the attached calculation sheet for the details regarding Facility-specific calculations and property tax exemption percentage results based upon these calculations.

REFERENCES

1. "Output-Based Regulations: A Handbook for Air Regulators", U.S. Environmental Protection Agency, Office of Atmospheric Programs – Climate Protection Partnerships Division, August, 2004, p.4.

2. "Output-Based Emissions Standards; Advancing Innovative Energy Technologies", Northeast-Midwest Institute; 2003, p. 9.

3. IBID, p.13.

4."Output-Based Regulations: A Handbook for Air Regulators", U.S. Environmental Protection Agency, Office of Atmospheric Programs – Climate Protection Partnerships Division, August, 2004, p.4.

5. http://www.cogeneration.net/Combined_Cycle_Power_Plants.htm

6. "Output-Based Emissions Standards; Advancing Innovative Energy Technologies", Northeast-Midwest Institute; 2003, p. 9.

9. PARTIAL PERCENTAGE CALCULATION

N/A.

10. PROPERTY CATEGORIES AND COSTS

See attached Schedule 10.

11. EMISSION REDUCTION INCENTIVE GRANT

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

[ ] Yes [X] No

12. 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 written notice.

13. 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: 22 Apr 2014

TITLE: Director

COMPANY: Duff and Phelps LLC

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.

14. DELINQUENT FEE/PENALTY PROTOCOL

This form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol. (Effective 9/1/2006)

Navasota - Colorado Bend - Phase I
3821 S. State Hwy 60
TCEQ Use Determination Application - 2008
Scheule 10
Tier IV

10. PROPERTY CATEGORIES AND COST

PROPERTY	PROJECT ID. NO.	IN SERVICE DATE	TAXABLE ON OR BEFORE 1/1/94? (Y / N)	TIER IV DECISION FLOW CHART BOX	ECL NUMBER	ESTIMATED PURCHASE COST	% EXEMPT	EXEMPT COST
Heat Recovery Steam Generators (HRSG)	1	2007	N	3	B-8	$ 26,544,805	100%	$ 26,544,805
Steam Turbine System	2	2007	N	3	B-10	$ 10,091,206	100%	$ 10,091,206
					Tier IV Total	$ 36,636,012		$ 36,636,012

Navasota - Colorado Bend - Phase II
3821 S. State Hwy 60
TCEQ Use Determination Application - 2008
Schedule 10
Tier IV

10. PROPERTY CATEGORIES AND COST

PROPERTY	PROJECT ID. NO.	IN SERVICE DATE	TAXABLE ON OR BEFORE 1/1/94? (Y / N)	TIER IV DECISION FLOW CHART BOX	ECL NUMBER	ESTIMATED PURCHASE COST	% EXEMPT	EXEMPT COST
Heat Recovery Steam Generators (HRSG)	3	CWIP	N	3	B-8	$ 30,018,278	100%	$ 30,018,278
Steam Turbine System	4	CWIP	N	3	B-10	$ 22,386,336	100%	$ 22,386,336
					Tier IV Total	$ 52,404,614		$ 52,404,614

52 404 614
36 636 012
89 040 636

Novasota Winston Energy Partners LP
Colorado Road Energy Center - Phase I
Schedule A - 2018 Thermal Efficiency Calculation

Subject Details:

Average Heat Rate [1]	7,746 (Btu/kWh)
NO_x Emissions [2]	168.6 Tons / year
Plant Capacity [3]	275 MW
Capacity Factor [4]	100.00%
Technology [5]	Combined Cycle
Total Subject Facility Cost [6]	$169,296,979
Total Cost of Tier IV Equipment [7]	$36,636,012

Baseline Details:

Average Heat Rate [8]	10,490 Btu/kWh
Technology [9]	Steam Turbine

STEP 1
Subject Output-Based Limit Calculation (lbs NOx/MWh)

Input-based Limit (lbs NOx/MMBtu)	x	Heat Rate (Btu/kWh)	/	Unit Conversions (1,000,000 Btu / 1000 kWh)	=	Output-based Limit (lbs NOx/MWh)
0.0198		7,746		1,000		0.1533

STEP 2
Subject Output Conversion Calculation (NOx Tons/Year)

Output-based Limit (lbs NOx/MWh)	x	Capacity (MW)	x	Capacity Factor	x	Unit Conversions (365 days * 24 Hours / 2,000 lbs)	=	Output NOx (Tons/Year)
0.1533		275		100.00%		4		168.6

STEP 3
Baseline Output-Based Limit Calculation (lbs NOx / MWh)

Input-based Limit (lbs NOx/MMBtu)	x	Heat Rate (Btu/kWh)	/	Unit Conversions (1,000,000 Btu / 1000 kWh)	=	Output-based Limit (lbs NOx/MWh)
0.0198		10,490		1,000		0.2077

STEP 4
Baseline Output Conversion Calculation (NOx Tons/Year)

Output-based Limit (lbs NOx/MWh)	x	Capacity (MW)	x	Capacity Factor	x	Unit Conversions (365 days * 24 Hours / 2,000 lbs)	=	Output NOx (Tons/Year)
0.2077		275		100.00%		4		228.5

STEP 5
Percent NOx Reduction Calculation

Output Baseline	x	Output Subject	/	Output Subject	=	% NOx Reduction
228.5		168.6		168.6		35.5%

STEP 6
Percent Exempt Calculation

Total Subject Unit Cost	x	% NOx Reduction	=	Capital Cost of NOx Avoidance
$169,296,979		35.5%		$60,100,428

STEP 7
Percent Exempt Calculation

Total Cost of NOx Avoidance	/	Total Cost of HB 3732 Equipment	=	% Exempt
$60,100,428		$36,636,012		164.0%

Conclude	100%

(1) - Heat rate represents plant performance test heat rate (HHV) and was provided by the client
(2) - NO_x emissions is the NO_x pollutant emission permit limit in tons per year provided by the client
(3) - Plant capacity is the average nominal capacity and was provided by the client
(4) - Capacity factor is the maximum operating level allowed under the emissions permit provided by the client
(5) - Technology represents the actual technology of the subject
(6) - Total subject facility cost represents the total cost to build the entire facility and it was determined based on data provided by the client
(7) - Total Tier IV equipment was determined by allocating the eligible TCEQ ECL part II equipment and their associated cost from actual data provide by the client
(8) - Baseline heat rate was published by the Energy Information Administration ("EIA")
(9) - Baseline technology represents the technology that the subject would have replaced at the time of the subjects construction

Novarata Wharton Energy Partners LLP
Colorado Bend Energy Center - Phase II
Schedule A - 2008 Thermal Efficiency Calculation

Subject Details:

Average Heat Rate (1)	7,746 (Btu/kWh)
NOx Emissions (2)	168.6 Tons / year
Plant Capacity (3)	275 MW
Capacity Factor (4)	100.00%
Technology (5)	Combined Cycle
Total Subject Facility Cost (6)	$162,042,822
Total Cost of Tier IV Equipment (7)	$52,404,614

Baseline Details:

Average Heat Rate (8)	10,490 Btu/kWh
Technology (9)	Steam Turbine

STEP 1
Subject Output-based Limit Calculation (lbs NOx / MWh)

Input-based Limit (lbs NOx/MMBtu)	x	Heat Rate (Btu/kWh)	/	Unit Conversions (1,000,000 Btu / 1000 kWh)	=	Output-based Limit (lbs NOx/MWh)
0.0198		7,746		1,000		0.1533

STEP 2
Subject Output Conversion Calculation (NOx Tons / Year)

Output-based Limit (lbs NOx/MWh)	x	Capacity (MW)	x	Capacity Factor	x	Unit Conversions (365 days * 24 Hours / 2,000 lbs)	=	Output NOx (Tons/Year)
0.1533		275		100.00%		4		168.6

STEP 3
Baseline Output-based Limit Calculation (lbs NOx / MWh)

Input-based Limit (lbs NOx/MMBtu)	x	Heat Rate (Btu/kWh)	/	Unit Conversions (1,000,000 Btu / 1000 kWh)	=	Output-based Limit (lbs NOx/MWh)
0.0198		10,490		1,000		0.2077

STEP 4
Baseline Output Conversion Calculation (NOx Tons / Year)

Output-based Limit (lbs NOx/MWh)	x	Capacity (MW)	x	Capacity Factor	x	Unit Conversions (365 days * 24 Hours / 2,000 lbs)	=	Output NOx (Tons/Year)
0.2077		275		100.00%		4		228.5

STEP 5
Percent NOx Reduction Calculation

Output Baseline	-	Output Subject	/	Output Subject	=	% NOx Reduction
228.5		168.6		168.6		35.5%

STEP 6
Percent Exempt Calculation

Total Subject Unit Cost	x	% NOx Reduction	=	Capital Cost of NOx Avoidance
$162,042,822		35.5%		$57,525,202

STEP 7
Percent Exempt Calculation

Total Cost of NOx Avoidance	/	Total Cost of HH 3732 Equipment	=	% Exempt
$57,525,202		$52,404,614		109.8%

Conclude	100%

(1) - Heat rate represents the anticipated heat rate (HHV) and was provided by the client
(2) - NOx emissions is the NOx pollutant emission permit limit in tons per year provided by the client
(3) - Plant capacity is the average nominal capacity and was provided by the client
(4) - Capacity factor is the maximum operating level allowed under the emissions permit provided by the client
(5) - Technology represents the actual technology of the subject
(6) - Total subject facility cost represents the total cost to build the entire facility and it was determined based on data provide by the client
(7) - Total Tier IV equipment was determined by allocating the eligible TCEQ ECs, part B equipment and then associated cost from actual data provide by the client
(8) - Baseline heat rate was published by the Energy Information Administration ("EIA")
(9) - Baseline technology represents the technology that the subject would have replaced at the time of the subjects construction

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 8, 2008

DUFF & PHELPS LLC
GREG MAXIM
919 CONGRESS #1450
AUSTIN TX 78701 -

This letter is to inform you that on 4/8/2008, Use Determination Application, 07-11926 (self assigned tracking number **DPCOBEND2008B**), was declared to be administratively complete. This application was filed for the following facility:

COLORADO BEND
3821 S STATE HWY 60
WHARTON TX 77488

The next step in the Use Determination Application process is the technical review of the application. If this is a Tier I, II, or III application the technical review will be completed within sixty days of the administrative complete date. If this is a Tier IV application the technical review will be completed within 30 days of the administrative complete date. If additional technical information is required a notice of deficiency letter (NOD) will be issued. The time period between the issuance of the NOD and the receipt of the response is not counted in determinating the length of the technical review .The TCEQ will notify you after the technical review has been completed. In accordance with the statute, the TCEQ has mailed a notice of receipt of this Use Determination Application to the WHARTON County Appraisal District. Please contact the Tax Relief for Pollution Control Property Program at (512) 239-3100 if you have any questions.

Sincerely,

Ron Hatlett
Tax Relief for Pollution Control Property Program

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 19, 2008

CHIEF APPRAISER
WHARTON COUNTY APPRAISAL DISTRICT
2407 1/2 N RICHMOND RD
WHARTON TX 77488

This letter is to inform you that a Use Determination Application has been filed by:

NAVASOTA WHARTON ENERGY PARTNERS LP

for:

COLORADO BEND
3821 S STATE HWY 60
WHARTON TX 77488-

Appraisal District Account Number: 10258-000-000-00

This facility is located in WHARTON County.

A complete copy of the application is included with this letter. We recommend that a copy of this application be shared with the person who conducts the appraisal of this property.

This application has been assigned a tracking number of 07 -11926. Please contact the Tax Relief for Pollution Control Property Program at (512) 239-3100 if you have any questions.

Sincerely,

Ron Hatlett
Tax Relief for Pollution Control Property Program

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 1, 2008

CHIEF APPRAISER
WHARTON COUNTY APPRAISAL DISTRICT
2407 1/2 N RICHMOND RD
WHARTON, TX 77488

This letter is to inform you that on 5/1/2008, a final determination was issued with regard to Use Determination application 07-11926, filed by:

NAVASOTA WHARTON ENERGY PARTNERS LP
COLORADO BEND
3821 S STATE HWY 60
WHARTON, TX 77488

A copy of the use determination is included with this letter. 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.

In order to qualify for a tax exemption, the applicant must file an exemption request with your appraisal district. This exemption request must be accompanied by a copy of the positive use determination issued by the TCEQ. If you have any questions regarding this Use Determination or the appeals process, please call me at 512/239-3100.

Sincerely,

David Greer
Team Leader, Pollution Prevention

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 1, 2008

DUFF & PHELPS LLC
GREG MAXIM
919 CONGRESS #1450
AUSTIN, TX 78701

This letter is to inform you that on 5/1/2008, the technical review of Use Determination Application 07-11926 was completed. This application is for:

NAVASOTA WHARTON ENERGY PARTNERS LP
COLORADO BEND
3821 S STATE HWY 60
WHARTON, TX 77488

The use determination is included with this letter. In order to request an exemption, a copy of this Use Determination, along with a completed exemption request form #50-248 (can be found at www.cpa.state.tx.us), must be provided to the Chief Appraiser of the appropriate appraisal district. This request must be made by April 30.

House Bill 3121, enacted during the 77th Legislative 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 Tax Relief for Pollution Control Property Program at (512) 239-3100.

Sincerely,

David Greer
Team Leader, Pollution Prevention

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11926, filed by:

NAVASOTA WHARTON ENERGY PARTNERS LP
COLORADO BEND
3821 S STATE HWY 60
WHARTON TX 77488

The pollution control property/project listed in the Use Determination Application is:

This facility has four thermally efficient heat recovery steam generators (HRSGs) and two steam turbines. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the four Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the two steam turbines. The use of the steam turbines does not provide an environmental benefit at the site. The steam turbines are not considered to be pollution control equipment.

Executive Director

Date

TAX RELIEF FOR POLLUTION CONTROL PROPERTY: TECHNICAL REVIEW DOCUMENT

Reviewed By: RLH App. No.: 07 - 11926 Review Start Date: 4/8/2008

Company Name: NAVASOTA WHARTON ENERGY PARTNERS LP
Facility Name: COLORADO BEND
County: WHARTON Outstanding Fees: N
Batch/Voucher Number:B500028

ADMINISTRATIVE REVIEW

Administrative Complete Date:4/8/2008

TIER LEVEL
What Tier is this application? The application was filed as a Tier IV application. Is this the appropriate level?

The property listed on this application, Heat Recovery Steam Generators and a steam turbine are items B8 and B10 on the Equipment and Categories List. This application was filed as a Tier IV, Tier IV is the appropriate level for this application.

RELEVANT RULE, REGULATION, OR STATUTORY PROVISION
The rule listed in the application is: 40 CFR 60.44Da
The appropriate rule is: 40 CFR 60.44Da

Explain why this is the appropriate rule?

40 CFR 60.Subpart DA: Standards of Performance for New Stationary Sources. Standards of performance for Electric Utility Steam Generating Units for Which Construction is Commenced after September 18, 1978. This is an appropriate rule.

BRIEF DESCRIPTION OF PROPERTY
The property is described as:

This facility has four thermally efficient heat recovery steam generators (HRSGs) and two steam turbines. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

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?

An adequate description of the property was provided, and the purpose of the property was listed. The anticipated environmental benefit is listed. Sketches and flow diagrams were provided.

DECISION FLOWCHART(30 TAC 17.15(a))
Mark the appropriate boxes: Box 3 Box 5 Box 6(IV) Y Box 10(III) Box 12(J) Box 13(II)
PART B DECISION FLOWCHART (17.15(b))
Mark the appropriate boxes: Box 1Y Box 2 Y Box 3 Y

Describe how the property flowed through the Decision Flowchart:

The Heat Recovery Steam Generators (HRSGs) are listed on Part B of the Equipment & Categories List as item B-8. As Part B equipment the HRSGs leave the Decision Flow Chart at Box 6 and pass through Box 1 of the Part B Decision Flow Chart with a yes answer. Since the use

of HRSGs provide an environmental benefit of reduced NOx emissions at the site there is a yes answer for Box 2. Since there is a reduction in NOx emissions there is an environmental rule which is being met, so there is a yes answer to Box 3. The steam turbine passes through Box 1 on the Part B Decision Flow Chart with a yes answer. Since the use of the steam turbine does not provide an environmental benefit at the site a no answer is the result of Box 2. The steam turbine is not eligible for a positive determination.

TIER III or IV APPLICATIONS

Does your calculation agree with the applicants?

No. The application contains a proposed formula for calculating the pollution control value of the HRSGs and the steam turbine. The formula is outcome determinative, and its focus is not on the pollution control aspect of the property. The Executive Director disagrees with this formula.

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.

The table was completed correctly. The applicant certified that all listed property became taxable for the first time after January 1, 1994. All the information necessary for conducting the technical review was included on the application.

TECHNICAL DEFICIENCIES

Is the application complete as received: Y If the application was not administratively complete explain below when justifying the final decision in the final determination section. If the application was not technically complete then:

Provide the language to be used in the Notice of Deficiency (NOD) letter:

Summarize the NOD response:

Provide the language used in the second NOD letter:

Summarize the second NOD response:

Provide the language used in the thied NOD letter:

Summarize the third NOD response:

FINAL DETERMINATION

If the property description has been summarized enter the detailed property description:

This facility has four thermally efficient heat recovery steam generators (HRSGs) and two steam

turbines. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

Provide the reason for your final determination:

The Heat Recovery Steam Generators meet all of the requirements of Chapter 17. A positive use determination based on the most appropriate formula should be issued for the Heat Recovery Steam Generators. The most appropriate formula has been determined by the Executive Director. A negative determination should be issued for the steam turbine. The use of the steam turbine does not result in there being an environmental benefit at the site.

Provide the language for the final determination.

A positive use determination of 100% for the four Heat Recovery Steam Generators. A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Highlight the required signatures and establish the appropriate due dates.

Reviewed: _____ **Date Signed:** 5/1/08

Peer Reviewed: _____ **Date Signed:** 5-1-08

Team Leader: _____ **Date Signed:** 5/1/08

Section Manager: _____ **Date Signed:** MAY 1 2008

Division Director: _____ **Date Signed:** MAY 1 2008

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 8, 2008

CALPINE/DOW
JUSTIN HYLAND/LEO SCHERRER
717 TEXAS AVE
HOUSTON TX 77002 -

This letter is to inform you that on 4/8/2008, Use Determination Application, 07-11994 (self assigned tracking number), was declared to be administratively complete. This application was filed for the following facility:

FREEPORT ENERGY CENTER LP
2301 N BRAZOSPORT BLVD
FREEPORT TX 77451

The next step in the Use Determination Application process is the technical review of the application. If this is a Tier I, II, or III application the technical review will be completed within sixty days of the administrative complete date. If this is a Tier IV application the technical review will be completed within 30 days of the administrative complete date. If additional technical information is required a notice of deficiency letter (NOD) will be issued. The time period between the issuance of the NOD and the receipt of the response is not counted in determinating the length of the technical review .The TCEQ will notify you after the technical review has been completed. In accordance with the statute, the TCEQ has mailed a notice of receipt of this Use Determination Application to the BRAZORIA County Appraisal District. Please contact the Tax Relief for Pollution Control Property Program at (512) 239-3100 if you have any questions.

Sincerely,

Ron Hatlett
Tax Relief for Pollution Control Property Program

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 03, 2008

CHIEF APPRAISER
BRAZORIA COUNTY APPRAISAL DISTRICT
500 N CHENANGO ST
ANGLETON TX 77515

This letter is to inform you that a Use Determination Application has been filed by:

FREEPORT ENERGY CENTER LP

for:

FREEPORT ENERGY CENTER LP
2301 N BRAZOSPORT BLVD
FREEPORT TX 77451-

This facility is located in **BRAZORIA** County.

A complete copy of the application is included with this letter. We recommend that a copy of this application be shared with the person who conducts the appraisal of this property.

This application has been assigned a tracking number of 07 -11994. Please contact the Tax Relief for Pollution Control Property Program at (512) 239-3100 if you have any questions.

Sincerely,

Ron Hatlett
Tax Relief for Pollution Control Property Program

4/2/2008 6:00:51PM

PROPHECY A/R OUTSTANDNG PAST DUE TRANSACTIONS REPORT

AE 6-130

ACCOUNT	FEE	CUSTOMER NAME	INVOICE	EACPER	TRAN DATE	DUE DATE	DESCRIPTION	TRAN BALANCE OUTSTANDING
00234420	UST	FREEMAN OR	SC2508-005	0000043732	APR11,05	APR11,05	LATE FEE FOR UST0556893	0.52
00234421	UST	FREEMAN OR	SC2508-006	0000043732	APR11,05	APR11,05	LATE FEE FOR UST0526431	0.52
00234421	UST	FREEMAN OR	SC2508-007	0000043732	APR11,05	APR11,05	LATE FEE FOR UST0500214	0.52
00234421	UST	FREEMAN OR	SC2508-008	0000043732	APR11,05	APR11,05	LATE FEE FOR UST0467889	0.52
00234421	UST	FREEMAN OR	SC2509-001	0000043732	MAY10,05	MAY10,05	LATE FEE FOR UST0654261	0.52
00234421	UST	FREEMAN OR	SC2509-002	0000043732	MAY10,05	MAY10,05	LATE FEE FOR UST0631019	0.52
00234421	UST	FREEMAN OR	SC2509-003	0000043732	MAY10,05	MAY10,05	LATE FEE FOR UST0606742	0.52
00234421	UST	FREEMAN OR	SC2509-004	0000043732	MAY10,05	MAY10,05	LATE FEE FOR UST0581320	0.52
00234421	UST	FREEMAN OR	SC2509-005	0000043732	MAY10,05	MAY10,05	LATE FEE FOR UST0556893	0.52
00234421	UST	FREEMAN OR	SC2509-006	0000043732	MAY10,05	MAY10,05	LATE FEE FOR UST0526431	0.52
00234421	UST	FREEMAN OR	SC2509-007	0000043732	MAY10,05	MAY10,05	LATE FEE FOR UST0500214	0.52
00234421	UST	FREEMAN OR	SC2509-008	0000043732	MAY10,05	MAY10,05	LATE FEE FOR UST0467889	0.52
00234421	UST	FREEMAN OR	SC2510-001	0000043732	JUN09,05	JUN09,05	LATE FEE FOR UST0654261	0.52
00234421	UST	FREEMAN OR	SC2510-002	0000043732	JUN09,05	JUN09,05	LATE FEE FOR UST0631019	0.52
00234421	UST	FREEMAN OR	SC2510-003	0000043732	JUN09,05	JUN09,05	LATE FEE FOR UST0606742	0.52
00234421	UST	FREEMAN OR	SC2510-004	0000043732	JUN09,05	JUN09,05	LATE FEE FOR UST0581320	0.52
00234421	UST	FREEMAN OR	SC2510-005	0000043732	JUN09,05	JUN09,05	LATE FEE FOR UST0556893	0.52
00234421	UST	FREEMAN OR	SC2510-006	0000043732	JUN09,05	JUN09,05	LATE FEE FOR UST0526431	0.52
00234421	UST	FREEMAN OR	SC2510-007	0000043732	JUN09,05	JUN09,05	LATE FEE FOR UST0500214	0.52
00234421	UST	FREEMAN OR	SC2510-008	0000043732	JUN09,05	JUN09,05	LATE FEE FOR UST0467889	0.52
00234421	UST	FREEMAN OR	UST0676591	0000043732	SEP30,05	OCT30,05	UPGROUND TANK FEE TANKS,FY0	100.00
00234421	UST	FREEMAN OR	UST0702372	0000043732	SEP30,06	OCT30,06	UPGROUND TANK FEE TANKS FY0	100.00
							TOTAL ACCOUNT: 00234421	1,780.65
FREEMAN VICKIE								
00488050	*UNCO*	*UN07*						
00488050	UST	FREEMAN VICKIE	UST0444440	0000068421	SEP30,96	OCT30,96	UPGROUND TANK FEE TANKS FY9	100.00
00488050	UST	FREEMAN VICKIE	UST0444441	0000068421	SEP30,96	OCT30,96	UPGROUND TANK FEE TANKS FY9	100.00
00488050	UST	FREEMAN VICKIE	UST0444442	0000068421	SEP30,96	OCT30,96	UPGROUND TANK FEE TANKS,FY9	100.00
00488050	UST	FREEMAN VICKIE	UST0444443	0000068421	SEP30,96	OCT30,96	UPGROUND TANK FEE TANKS FY9	100.00
00488050	UST	FREEMAN VICKIE	UST0444444	0000068421	SEP30,96	OCT30,96	UPGROUND TANK FEE TANKS FY9	100.00
00488050	UST	FREEMAN VICKIE	UST0444445	0000068421	SEP30,96	OCT30,96	UPGROUND TANK FEE TANKS FY9	100.00
00488050	UST	FREEMAN VICKIE	UST0444446	0000068421	SEP30,96	OCT30,96	UPGROUND TANK FEE TANKS FY8	50.00
00488050	UST	FREEMAN VICKIE	UST0444447	0000068421	SEP30,96	OCT30,96	UPGROUND TANK FEE TANKS,FY8	50.00
							TOTAL ACCOUNT: 00488050	700.00
FRESH INC DBA PRINCE								
24000027								
24000027	DCR	FRESH INC DBA PRINCE	DCR0060546	105090195	JAN31,08	MAR01,08	DRY CLEAN REG FEE FY08Q2	62.50

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: Leo Schramm DATE: 3/28/2008

TITLE: Sr Tax Specialist

COMPANY: The Dow Chemical Co.

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.

15. DELINQUENT FEE/PENALTY PROTOCOL

This form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol.(Effective September 1, 2006)

11. PROPERTY CATEGORIES AND COSTS

Property	Property Taxable on or before 1/01/94	Decision Flow Chart Box 7, 9, or 10	PEL Number	Estimated Purchase Cost	Partial Percentage
Land					
Property Heat recovery steam generation system Steam turbine/generator, Condenser and ancillary pump system.	No	3, Fig 17.15 (b)	B-8 B-10 B-8	$15.300,000 $18,000,000 $8.000,000	98%
Totals				$41,300,000	98%

12. EMISSION REDUCTION INCENTIVE GRANT

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

[ ] Yes [X] 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.

Partial Percentage:

This power generation facility is located in an Ozone Non-attainment area, Brazoria county, and therefore NOx reductions were mandatory at the Freeport site of The Dow Chemical Company. In order to meet the NOx reduction an agreement was reached whereby the Freeport Energy Center (Calpine) built a replacement power generation facility to replace Dow's aging Power 4 plant. The Power 4 plant had an effective age of over 40 years. The new power generation facility was built with NOx reduction being the primary driving force. The existing power generation facility owned by The Dow Chemical Company was shutdown. On a ppm basis NOx concentrations were reduced from 147 ppm at the old existing power facility to a lower level of 3 ppm with the new power generation facility. Due to the age of the existing facility a retrofit was not practical.

The partial percentage is calculated and based on the NOx reduction.

$$V\,\% = \frac{147 \text{ ppm} - 3 \text{ ppm}}{147 \text{ ppm}} \times 100 = 98\%$$

F. Customer Number or Regulated Entity Number: _____

5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY

A. Name of Appraisal District: Brazoria County Appraisal District

B. Appraisal District Account Number: POLL-Fren-001

6. CONTACT NAME (must be provided)

A. Company/Organization Name: Calpine/Dow

B. Name of Individual to Contact: Justin Hyland/Leo Scherrer

C. Mailing Address: 717 Texas Avenue

D. City, State, ZIP: Houston, TX 77002

E. Telephone number and fax number: (713) 830-8873 / (713) 830-8670

F. E-Mail address (if available): HylandJ@Calpine.com Lscherrer@dow.com

7. RELEVANT RULE, REGULATION, OR STATUTORY PROVISION

MEDIUM	RULE/REGULATION/LAW
Air	40 CFR Part 60 Standards of Performance for New Stationary Sources, General Conditions Subpart A, HRSGs Subpart Dv, Subpart GG Standards of Performance for Stationary Gas Turbines.
Water	
Waste	

8. DESCRIPTION OF PROPERTY (Complete for all applications)

This project included the installation of a HRSG (heat recovery steam generation) system. This project was driven by the requirement to reduce NOx. The existing power generation could not be retrofitted and achieve the required NOx reduction.

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

032283

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

2008 MAY 23 AM 8:43

CHIEF CLERKS OFFICE

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 or (512)239-1917. 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
[ ] Partnership
[X] Limited Partnership
[ ] Sole Proprietor
[ ] Utility
[ ] Other

B. Size of company: Number of Employees

[X] 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): Power generation.

2. TYPE OF APPLICATION

A. [ ] **Tier I** $150 Application Fee.
B. [ ] **Tier II** $1,000 Application Fee.
C. [ ] **Tier III** $2,500 Application Fee.
d. [X] **Tier IV** $500 Application Fee.

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: Freeport Energy Center, L.P.
B. Mailing Address (Street or PO Box): 4100 Underwood Road
C. City, State, ZIP: Pasedena, TX 7507

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

A. Name of Facility or Unit: Freeport Energy Center, L.P.
B. Type of Mfg. Process or Service: Electric Power Generation
C. Street Address: 2301 N. Brazosport Blvd
D. City, State, ZIP: Freeport, TX 77541
E. Tracking Number Assigned by Applicant:

07-1194

AE 6-135

Executive Director's Exhibit 5

Freeport: Application and Use Determination Documents

turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

Provide the reason for your final determination:

The Heat Recovery Steam Generators meet all of the requirements of Chapter 17. A positive use determination based on the most appropriate formula should be issued for the Heat Recovery Steam Generators. The most appropriate formula has been determined by the Executive Director. A negative determination should be issued for the steam turbine. The use of the steam turbine does not result in there being an environmental benefit at the site.

Provide the language for the final determination.

A positive use determination of 100% for the two Heat Recovery Steam Generators. A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Highlight the required signatures and establish the appropriate due dates.

Reviewed: [signature] **Date Signed:** 5/1/08

Peer Reviewed: [signature] **Date Signed:** 5-1-08

Team Leader: [signature] **Date Signed:** 5/1/08

Section Manager: [signature] **Date Signed:** MAY 1 2008

Division Director: [signature] **Date Signed:** MAY 1 2008

cycle plant. provides an environmental benefit of reduced NOx emissions at the site. So there is a Yes answer for Box 2, Since there is a reduction in NOx emissions there is an environmental rule which is being met so there is a yes answer to Box 3. The steam turbine passes through Box 1 on the Part B Decision Flow Chart with a yes answer. Since the use of the steam turbine does not provide an environmental benefit at the site a no answer is the result of Box 2. The steam turbine is not eligible for a positive determination.

TIER III or IV APPLICATIONS

Does your calculation agree with the applicants?

No. The application contains a proposed formula for calculating the pollution control value of the HRSGs and the steam turbine. The formula is outcome determinative, and its focus is not on the pollution control aspect of the property. The Executive Director disagrees with this formula.

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.

The table was completed correctly. The applicant certified that all listed property became taxable for the first time after January 1, 1994. All the information necessary for conducting the technical review was included on the application.

TECHNICAL DEFICIENCIES

Is the application complete as received: Y If the application was not administratively complete explain below when justifying the final decision in the final determination section. If the application was not technically complete then:

Provide the language to be used in the Notice of Deficiency (NOD) letter:

Summarize the NOD response:

Provide the language used in the second NOD letter:

Summarize the second NOD response:

Provide the language used in the thied NOD letter:

Summarize the third NOD response:

FINAL DETERMINATION

If the property description has been summarized enter the detailed property description:

This facility has two thermally efficient heat recovery steam generators (HRSGs) and one steam

TAX RELIEF FOR POLLUTION CONTROL PROPERTY: TECHNICAL REVIEW DOCUMENT

Reviewed By: RLH App. No.: 07 - 11969 Review Start Date: 4/8/2008

Company Name: BRAZOS VALLEY ENERGY LP
Facility Name: BRAZOS VALLEY ENERGY
County: FORT BEND Outstanding Fees: N
Batch/Voucher Number:B500156

ADMINISTRATIVE REVIEW

Administrative Complete Date:4/8/2008

TIER LEVEL
What Tier is this application? The application was filed as a Tier IV application. Is this the appropriate level?

The property listed on this application, Heat Recovery Steam Generators and a steam turbine are items B8 and B10 on the Equipment and Categories List. This application was filed as a Tier IV. Tier IV is the appropriate level for this application.

RELEVANT RULE, REGULATION, OR STATUTORY PROVISION
The rule listed in the application is: 40 CFR 60.44Da
The appropriate rule is: 40 CFR 60.44Da

Explain why this is the appropriate rule?

40 CFR 60.Subpart DA: Standards of Performance for New Stationary Sources. Standards of performance for Electric Utility Steam Generating Units for Which Construction is Commenced after September 18, 1978. This is an appropriate rule.

BRIEF DESCRIPTION OF PROPERTY
The property is described as:

This facility has two thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

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?

An adequate description of the property was provided, and the purpose of the property was listed. The anticipated environmental benefit is listed. Sketches and flow diagrams were provided.

DECISION FLOWCHART(30 TAC 17.15(a))
Mark the appropriate boxes: Box 3 Box 5 Box 6(IV) Y Box 10(III) Box 12(I) Box 13(II)
PART B DECISION FLOWCHART (17.15(b))
Mark the appropriate boxes: Box 1Y Box 2 Y Box 3 Y

Describe how the property flowed through the Decision Flowchart:

Since the property is listed on Part B of the Equipment & Categories List this property leaves the Decision Flow Chart at Box 6. It passes through Box 1 of the Part B Decision Flow Chart with a yes answer. The use of this property at a combined cycle plant, as opposed to having a simple

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 28, 2008

CHIEF APPRAISER
FORT BEND COUNTY APPRAISAL DISTRICT
2801 B F TERRY BLVD
ROSENBERG TX 77471

This letter is to inform you that a Use Determination Application has been filed by:

BRAZOS VALLEY ENERGY LP

for:

BRAZOS VALLEY ENERGY
3440 LOCKWOOD RD
RICHMOND TX 77469-

Appraisal District Account Number: 0348-00-000-0203-901

This facility is located in FORT BEND County.

A complete copy of the application is included with this letter. We recommend that a copy of this application be shared with the person who conducts the appraisal of this property.

This application has been assigned a tracking number of 07 -11969. Please contact the Tax Relief for Pollution Control Property Program at (512) 239-3100 if you have any questions.

Sincerely,

Ron Hatlett
Tax Relief for Pollution Control Property Program

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 8, 2008

DUFF & PHELPS LLC
GREG MAXIM
919 CONGRESS #1450
AUSTIN TX 78701 -

This letter is to inform you that on 4/8/2008, Use Determination Application, 07-11969 (self assigned tracking number DPBRAZOSVALLEY B), was declared to be administratively complete. This application was filed for the following facility:

BRAZOS VALLEY ENERGY
3440 LOCKWOOD RD
RICHMOND TX 77469

The next step in the Use Determination Application process is the technical review of the application. If this is a Tier I, II, or III application the technical review will be completed within sixty days of the administrative complete date. If this is a Tier IV application the technical review will be completed within 30 days of the administrative complete date. If additional technical information is required a notice of deficiency letter (NOD) will be issued. The time period between the issuance of the NOD and the receipt of the response is not counted in determinating the length of the technical review .The TCEQ will notify you after the technical review has been completed. In accordance with the statute, the TCEQ has mailed a notice of receipt of this Use Determination Application to the FORT BEND County Appraisal District. Please contact the Tax Relief for Pollution Control Property Program at (512) 239-3100 if you have any questions.

Sincerely,

Ron Hatlett
Tax Relief for Pollution Control Property Program

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11969, filed by:

BRAZOS VALLEY ENERGY LP
BRAZOS VALLEY ENERGY
3440 LOCKWOOD RD
RICHMOND TX 77469

The pollution control property/project listed in the Use Determination Application is:

This facility has two thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the two Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Executive Director

May 2 2008
Date

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 1, 2008

DUFF & PHELPS LLC
GREG MAXIM
919 CONGRESS #1450
AUSTIN, TX 78701

This letter is to inform you that on 5/1/2008, the technical review of Use Determination Application 07-11969 was completed. This application is for:

BRAZOS VALLEY ENERGY LP
BRAZOS VALLEY ENERGY
3440 LOCKWOOD RD
RICHMOND, TX 77469

The use determination is included with this letter. In order to request an exemption, a copy of this Use Determination, along with a completed exemption request form #50-248 (can be found at www.cpa.state.tx.us), must be provided to the Chief Appraiser of the appropriate appraisal district. This request must be made by April 30.

House Bill 3121, enacted during the 77th Legislative 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 Tax Relief for Pollution Control Property Program at (512) 239-3100.

Sincerely,

David Greer
Team Leader, Pollution Prevention

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 1, 2008

CHIEF APPRAISER
FORT BEND COUNTY APPRAISAL DISTRICT
2801 B F TERRY BLVD
ROSENBERG, TX 77471

This letter is to inform you that on 5/1/2008, a final determination was issued with regard to Use Determination application 07-11969, filed by:

BRAZOS VALLEY ENERGY LP
BRAZOS VALLEY ENERGY
3440 LOCKWOOD RD
RICHMOND, TX 77469

A copy of the use determination is included with this letter. 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.

In order to qualify for a tax exemption, the applicant must file an exemption request with your appraisal district. This exemption request must be accompanied by a copy of the positive use determination issued by the TCEQ. If you have any questions regarding this Use Determination or the appeals process, please call me at 512/239-3100.

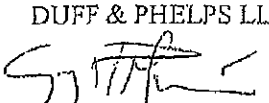
Sincerely,

David Greer
Team Leader, Pollution Prevention

If you have any questions regarding the Application or the information supplied with these Application, please contact Greg Maxim of Duff & Phelps, LLC at (512) 671-5580 or e-mail at gregory.maxim@duffandphelps.com.

Very truly yours,

DUFF & PHELPS LLC

Signature: 

Name: Greg Maxim

Title: Director

Enclosures

DUFF & PHELPS

Greg Maxim
Director
Phone:(512) 671-5580
gregory.maxim@duffandphelps.com

March 20, 2008

TCEQ - Cashiers Office MC-214
Building A
12100 Park 35 Circle
Austin, Texas 78753

Subject: Application for Use Determination for Pollution Control Property
Brazos Valley Energy - 3440 Lockwood Road Richmond, Texas 77469

Enclosed please find one application (the "Application") for property tax exemptions for certain qualifying pollution control property at the Brazos Valley Energy Project (the "Facility") in Fort Bend County, Texas.

Pursuant to Title 30 of Chapter 17 of the Texas Administrative Code, the Application has been prepared using the Texas Commission on Environmental Quality ("TCEQ") Application for Use Determination for Pollution Control Property. The enclosed application is a Tier IV Application.

Submission of this Application is required as a process step in the TCEQ's pollution control certification process for tax exemption of certain assets used in pollution control capacities within the Facility. As outlined by the application instructions, the fee for this Tier IV Application is $500. Enclosed please find a check for $500 for the Application processing.

The Application can be summarized as follows:

Property	Description	Estimated Cost
Tier IV	See Attached Schedule	$56,913,424

Please send one copy of the completed property tax exemption Use Determination to the following address:

Duff and Phelps LLC
c/o Greg Maxim
919 Congress Ave.
Suite 1450
Austin, TX 78701

Subject Unit: [illegible] Tier IV Eligibility Calculations

Subject Details:

Average Heat Rate [1]		7,050 (Btu/kWh)
NOx Emission: [2]		117.17 Tons / year
Plant Capacity [3]		550 MW
Capacity Factor [4]		69.96%
Technology [5]		Combined Cycle
Total Subject Facility Cost [6]	$	290,000,000
Total Cost of Tier IV Equipment [7]	$	56,913,424

Baseline Details:

Average Heat Rate [8]	10,490 Btu/kWh
Technology [9]	Steam Turbine

STEP 1
Subject Unit NOx Rate Calculation (lbs NOx/MWh)

Input-based Limit (lbs NOx/MMBtu)	x	Heat Rate (Btu/kWh)	/	Unit Conversions (1,000,000 Btu / 1000 kWh)	=	Output-based Limit (lbs NOx/MWh)
0.0108		7,050		1,000		0.0761

STEP 2
Subject Unit Annual Emissions Calculation (NOx Tons/Year)

Output-based Limit (lbs NOx/MWh)	x	Capacity (MW)	x	Capacity Factor	x	Unit Conversions (365 days * 24 Hours / 2,000 lbs)	=	Output NOx (Tons/Year)
0.0761		550		69.96%		4		117.2

STEP 3
Baseline Output Rate Calculation (lbs NOx/MWh)

Input-based Limit (lbs NOx/MMBtu)	x	Heat Rate (Btu/kWh)	/	Unit Conversions (1,000,000 Btu / 1000 kWh)	=	Output-based Limit (lbs NOx/MWh)
0.0102		10,490		1,000		0.1133

STEP 4
Baseline Output Emissions Calculation (NOx Tons/Year)

Output-based Limit (lbs NOx/MWh)	x	Capacity (MW)	x	Capacity Factor	x	Unit Conversions (365 days * 24 Hours / 2,000 lbs)	=	Output NOx (Tons/Year)
0.1133		550		69.96%		4		174.4

STEP 5
Percent NOx Reduction Calculation

Output Baseline	-	Output Subject	/	Output Subject	=	% NOx Reduction
174.4		117.2		117.2		48.8%

STEP 6
Percent Exempt Calculation

Total Subject Unit Cost	X	% NOx Reduction	=	Equitable Cost of NOx Avoidance
$290,000,000		48.8%		$141,520,000

STEP 7
Percent Exempt Calculation

Total Cost of NOx Avoidance	/	Total Cost of Tier IV Equipment	=	% Exempt
$141,520,000		$56,913,424		248.7%

Complete	100%

(1) - Heat rate represents plant actual heat rate (HHV) and was provided by the client
(2) - NOx emission - is the actual NOx pollutant produce in ppm and was provide by the client
(3) - Plant capacity is the average nominal capacity and was provided by the client
(4) - Capacity factor represent an average annual capacity factor and was provided by the client
(5) - Technology represents the actual technology of the subject
(6) - Total subject facility cost represents the total cost to build the entire facility and it was determined based on data provide by the client
(7) - Total Tier IV equipment was determined by allocating the eligible TCEQ ECL part B equipment and their associated cost from actual data provide by the client
(8) - Baseline heat rate was published by the Energy Information Administration (EIA*)
(9) - Baseline technology represents the technology that the subject would have replaced at the time of the subject - one turbine

Calpine
Brazos Valley
TCEQ Use Determination Application - 2008
Schedule 10
Tier IV

10. PROPERTY CATEGORIES AND COST

PROPERTY	PROJECT ID. NO.	IN SERVICE DATE	TAXABLE ON OR BEFORE 1/1/94? (Y / N)	TIER IV DECISION FLOW CHART BOX	ECL NUMBER	ESTIMATED PURCHASE COST	% EXEMPT	EXEMPT COST
Heat Recovery Steam Generators (HRSG)	1	2003	N	3	B-8	$ 39,913,424	100%	$ 39,913,424
Steam Turbine Systems	2	2003	N	3	B-10	$ 17,000,000	100%	$ 17,000,000
					Tier IV Total	$ 56,913,424		$ 56,913,424

EXHIBIT 7

TCEQ Docket Numbers
2008-0830-MIS-U (UD 07-11914/Tenaska Gateway Partners, Ltd – Rusk County)
2008-0831-MIS-U (UD 07-11966/Freestone Power Generation, L.P. – Freestone County)
2008-0832-MIS-U (UD 07-11971/Borger Energy Associates, L.P. – Hutchinson County)
2008-0849-MIS-U (UD 07-11969/Brazos Valley Energy, L.P. – Fort Bend County)
2008-0850-MIS-U (UD 07-11994/Freeport Energy Center, L.P. – Brazoria County)
2008-0851-MIS-U (UD 07-11926/Navasota Wharton Energy Partners, L.P. – Wharton County)

Appeal of Executive Director's Use	§	Before the
Determination Issue to	§	
Tenaska Gateway Partners, Ltd;	§	Texas Commission
Freestone Power Generation, L.P.;	§	
Borger Energy Associates, L.P.;	§	on
Brazos Valley Energy, L.P.;	§	
Freeport Energy Center, L.P.; and	§	
Navasota Wharton Energy Partners, L.P	§	Environmental Quality

Executive Director's Request for Remand of Applications Submitted by Tenaska Gateway Partners, Ltd; Freestone Power Generation, L.P.; Borger Energy Associates, L.P.; Brazos Valley Energy, L.P.; Freeport Energy Center, L.P.; and Navasota Wharton Energy Partners, L.P.

Pursuant to 30 TAC § 17.25(d), the Executive Director of the Texas Commission on Environmental Quality requests that the General Council remand the above listed applications for further processing.

Respectfully submitted,

Texas Commission on Environmental Quality

Zak Covar
Executive Director

Caroline Sweeney, Deputy Director
Office of Legal Services

Robert Martinez, Director
Environmental Law Division

Daniel Long

Daniel Long, Staff Attorney
Environmental Law Division
State Bar No. 24032679
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-5373
(512) 239-0606

EXHIBIT 7

CERTIFICATE OF SERVICE

I certify that on June 18, 2012, the original and 7 copies of the Executive Director's Request for Remand of Applications Submitted by Tenaska Gateway Partners, Ltd; Freestone Power Generation, L.P.; Borger Energy Associates, L.P.; Brazos Valley Energy, L.P.; Freeport Energy Center, L.P.; and Navasota Wharton Energy Partners, L.P. was filed with the Office of the Chief Clerk, Texas Commission on Environmental Quality, and was served by first-class mail, agency mail, electronic mail, or facsimile to all persons on the attached mailing list.

Daniel Long

Daniel Long, Staff Attorney
Environmental Law Division
Texas Commission on Environmental Quality

Mailing List
TCEQ Docket Numbers
2008-0830-MIS-U (UD 07-11914/Tenaska Gateway Partners, Ltd – Rusk County)
2008-0831-MIS-U (UD 07-11966/Freestone Power Generation, L.P. – Freestone County)
2008-0832-MIS-U (UD 07-11971/Borger Energy Associates, L.P. – Hutchinson County)
2008-0849-MIS-U (UD 07-11969/Brazos Valley Energy, L.P. – Fort Bend County)
2008-0850-MIS-U (UD 07-11994/Freeport Energy Center, L.P. – Brazoria County)
2008-0851-MIS-U (UD 07-11926/Navasota Wharton Energy Partners, L.P. – Wharton County)

Appraisal Districts

Terry W. Decker, RRP/CTA/RTA
Chief Appraiser
Rusk County Appraisal District
P. O. Box 7
Henderson, Texas 75653-0007
903/657-3578 Fax 903/657-9073
tdecker@ ruskcad.org

Bud Black, RPA/CTA
Chief Appraiser
Freestone Central Appraisal District
218 North Mount Street
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903/389-5510 Fax 903/389-5955
general.info@freestoncad.org

Diana Hooks, RPA/RTA
Chief Appraiser
Hutchinson County Appraisal District
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Borger, Texas 79008-5065
806/274-2294 Fax 806/273-3400
hcad3@amaonline.com

Glen Whitehead, RPA
Chief Appraiser
Fort Bend County Central Appraisal District
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Rosenberg, Texas 77471-5600
281/344-8623 Fax 281/762-9666
Glenwhitehead@fbcad.org

Cheryl Evans
Chief Appraiser
Brazoria County Appraisal District
500 North Chenango Street
Angleton, Texas 77515
979/849-7792 Fax 979/849-7984
bcad@brazoriacad.org

Tylene Gamble
Chief Appraiser
Wharton County Appraisal District
308 East Milam Street
Wharton, Texas 77488-4918
979/532-8931 Fax 979/532-5691
whartoncad@sbcglobal.net

Pritchard & Abbott, Inc.
Attn: Mr. C. Wayne Frazell
4900 Overton Commons Court
Fort Worth, Texas 76132-3687
817/926-7861 Fax 817/927-5314
wfrazell@pandai.com

Applicants:

David D. Johnson
Tenaska Gateway Partners, Ltd.
1044 N 115th St. Suite 400
Omaha, Nebraska 68154-4446
402/691-9500 Fax 402/691-9226

Freestone Power Generation, L.P.
717 Texas, Suite 1000
Houston, Texas 77002

Borger Energy Associates, L.P.
7001 Boulevard 26, Suite 310
North Richland Hills, Texas 76180

Brazos Valley Energy, L.P.
717 Texas, Suite 1000
Houston, Texas 77002

Freeport Energy Center, L.P.
4100 Underwood Road
Pasadena, Texas 77507

Navasota Wharton Energy Partners LP
403 Corporate Woods
Magnolia, Texas 77354

Greg Maxim
Dennis Deegear
Duff & Phelps LLC
919 Congress Ave., Suite 1450
Austin, Texas 78701
512/671-5580 Fax 512/671-5501
gregory.maxim@duffandphelps.com
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Justin Hyland
Leo Scherrer
717 Texas Avenue
Houston, Texas 77002
713/830-8873 Fax 713/830-8670
hylandj@calpine.com
lscherrer@dow.com

Hugh L. Landrum & Associates
Attn: Mr. Hugh L. Landrum, Jr.
12621 Featherwood, Suite 325
Houston, Texas 77034
281/484-7000 Fax 281/484-7272
hughjr@hughlandrum.com

Commission:

Blas Coy
TCEQ Office of Public Interest Counsel (MC 103)
P. O. Box 13087
Austin, Texas 78711-3087
512/239-6363 Fax 512/239-6377

Docket Clerk
TCEQ Office of the Chief Clerk (MC 105)
P. O. Box 13087
Austin, Texas 78711-3087
512/239-3300 Fax 512/239-3311

EXHIBIT 8

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2012 JUN 29 PM 4:29

CHIEF CLERKS OFFICE

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 29, 2012

To: Persons on the attached service list (by mail and facsimile as indicated)

Re: Request for remand of Prop 2 Use Determination Application Nos. 07-11914, 07-11966, 07-11971, 07-11969, 07-11994, and 07-11926 submitted under TCEQ Docket Nos. 2008-0830-MIS-U; 2008-0831-MIS-U; 2008-0832-MIS-U; 2008-0849-MIS-U; 2008-0850-MIS-U; and 2008-0851-MIS-U.

On June 18, 2012, the Executive Director (ED) filed a request (served on each of the parties for the respective use determination appeals) under 30 TAC § 17.25(d) for remand of the following use determination applications for further processing:

- Application No. 07-11914, Tenaska Gateway Partners, Ltd, Rusk County (TCEQ Docket No. 2008-0830-MIS-U);
- Application No. 07-11966, Freestone Power Generation, L.P., Freestone County (TCEQ Docket No. 2008-0831-MIS-U);
- Application No. 07-11971, Borger Energy Associates, L.P., Hutchinson County (TCEQ Docket No. 2008-0832-MIS-U);
- Application No. 07-11969, Brazos Valley Energy Center, L.P., Fort Bend County (TCEQ Docket No. 2008-0849-MIS-U);
- Application No. 07-11994, Freeport Energy Center, L.P., Brazoria County (TCEQ Docket No. 2008-0850-MIS-U); and
- Application No. 07-11926, Navasota Wharton Energy Partners, L.P., Wharton County (TCEQ Docket No. 2008-0851-MIS-U).

Section 17.25(d) provides that "the general counsel may remand a matter from the commission's agenda to the executive director if the executive director ... requests a remand." Pursuant to 30 TAC § 17.25(d), this letter grants the ED's request to remand the above-listed applications to the ED for further processing. The General Counsel notes that any revised use determination that may subsequently be issued by the ED will be subject to the appeals process set forth in § 17.25 of the Commission's rules.

If you have any questions about this matter, please contact Jim Rizk, Assistant General Counsel, at 512/239-5530.

Very truly yours,

Les Trobman
General Counsel

Mailing List

EXHIBIT 8

Mailing List
Prop 2 Use Determination Application
Nos. 07-11914, 07-11966, 07-11971, 07-11969, 07-11994, and 07-11926
TCEQ Docket Nos. 2008-0830-MIS-U; 2008-0831-MIS-U; 2008-0832-MIS-U;
2008-0849-MIS-U; 2008-0850-MIS-U; and 2008-0851-MIS-U

Terry W. Decker, RRP/CTA/RTA
Chief Appraiser
Rusk County Appraisal District
P.O. Box 7
Henderson, Texas 75653-0007
903/657-3578 FAX 903/657-9073
tdecker@ruskcad.org

Bud Black, RPA/CTA
Chief Appraiser
Freestone Central Appraisal District
218 North Mount Street
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general.info@freestoncad.org

Diana Hooks, RPA/RTA
Chief Appraiser
Hutchinson County Appraisal District
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Borger, Texas 79008-5065
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hcad3@amaonline.com

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Chief Appraiser
Fort Bend County Central Appraisal District
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Rosenberg, Texas 77471-5600
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Cheryl Evans
Chief Appraiser
Brazoria County Appraisal District
500 North Chenango Street
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Tylene Gamble
Chief Appraiser
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979/532-8931 FAX 979/532-5691
whartoncad@sbcglobal.net

Pritchard & Abbott, Inc.
Attn: Mr. C. Wayne Frazell
4900 Overton Commons Court
Fort Worth, Texas 76132-3687
817/926-7861 FAX 817/927-5314
wfrazell@pandai.com

David D. Johnson
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Freestone Power Generation, L.P.
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Borger Energy Associates, L.P.
7001 Boulevard 26, Suite 310
North Richland Hills, Texas 76180

Brazos Valley Energy, L.P.
717 Texas, Suite 1000
Houston, Texas 77002

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4100 Underwood Road
Pasadena, Texas 77507

Navasota Wharton Energy Partners LP
403 Corporate Woods
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Daniel Long
TCEQ Environmental Law Division MC 173
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Susana M. Hildebrand, P.E.
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512/239-4900 FAX 512/239-6188

Chance Goodin
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Robert Martinez
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Blas Coy
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512/239-6363 FAX 512/239-6377

Docket Clerk
TCEQ Office of Chief Clerk MC 105
P.O. Box 13087
Austin, Texas 78711-3087
512/239-3300 FAX 512/239-3311

EXHIBIT 9

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 10, 2012

Mr. Greg Maxim
Director
Duff and Phelps, LLC
919 Congress Ave Ste 1450
Austin, Texas 78701

Re: Notice of Negative Use Determination
Borger Energy Associates, LP
Blackhawk Station
119 N. Spur Co-Gen Place
Borger (Hutchinson County)
Application Number: 07-11971; Tracking Number: DPBlackhawk B

Dear Mr. Maxim:

This letter responds to Borger Energy Associates, LP's Application for Use Determination for the Blackhawk Station, remanded to the executive director on June 29, 2012, pursuant to the Texas Commission on Environmental Quality's (TCEQ) Tax Relief for Pollution Control Property Program

The TCEQ has completed the review for application #07-11971 and has issued a Negative Use Determination for the property in accordance with Title 30 Texas Administrative Code (TAC) §17.4 and §17.6. Heat recovery steam generators are used solely for production and, therefore, are not eligible for a positive use determination.

Please be advised that a Negative Use Determination may be appealed. The appeal must be filed with the TCEQ Chief Clerk within 20 days after the receipt of this letter in accordance with 30 TAC §17.25.

If you have questions regarding this letter or need further assistance, please contact Ronald Hatlett of the Tax Relief for Pollution Control Property Program by telephone at (512) 239-6348, by e-mail at ronald.hatlett@tceq.texas.gov, or write to the Texas Commission on Environmental Quality, Tax Relief for Pollution Control Property Program, MC-110, P.O. Box 13087, Austin, Texas 78711-3087.

Sincerely,

Chance Goodin, Team Leader
Stationary Source Programs
Air Quality Division

CG/RH

cc: Chief Appraiser, Hutchinson County Appraisal District, PO Box 5065, Borger, Texas 79008-5065

EXHIBIT 10

FULBRIGHT
& Jaworski L.L.P.
Attorneys at Law

300 Convent Street, Suite 2100 • San Antonio, Texas 78205-3792
ekliewer@fulbright.com • Direct: 210 270 7144 • Main: 210 224 5575 • Facsimile: 210 270 7205

July 31, 2012

VIA FAX

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2012 JUL 31 PM 4:20
CHIEF CLERKS OFFICE

Re: Use Determination Application No. 07-11971
TCEQ Docket No. 2008-0832-MIS-U
Borger Energy Associates, LP
Appeal of Purported Negative Use Determination

Dear Ms. Bohac:

We represent Borger Energy Associates, LP (Borger), the applicant in the above-referenced matter. Our client is in receipt of the July 10, 2012 letter from Chance Goodin in which he purports to issue a negative use determination on behalf of the Executive Director for Borger's application. This July 10, 2012 letter was served without an accompanying document signed by the Executive Director.

Pursuant to 30 Tex. Admin. Code § 17.25(a)(2)(A), Borger files this appeal of the purported negative use determination, and it does so without waiving its right to contest whether or not the Executive Director's presumed agent has in fact issued a lawful negative use determination. The information required under 30 Tex. Admin. Code § 17.25(b) is as follows:

(1) provide the name, address, and daytime telephone number of the person who files the appeal:

The undersigned is filing this appeal on behalf of Borger. All correspondence for this appeal should be sent to the following:

Edward Kliewer
Fulbright & Jaworski L.L.P.
300 Convent Street, Suite 2100
San Antonio, Texas 78205-3792
Telephone: (210) 270-7144
Fax: (210) 270-7205
Email: ekliewer@fulbright.com

AUSTIN • BEIJING • DALLAS • DENVER • DUBAI • HONG KONG • HOUSTON • LONDON • LOS ANGELES • MINNEAPOLIS
MUNICH • NEW YORK • PITTSBURGH-SOUTHPOINTE • RIYADH • SAN ANTONIO • ST. LOUIS • WASHINGTON DC
www.fulbright.com

EXHIBIT 10

(2) give the name and address of the entity to which the use determination was issued;

Borger Energy Associates, LP
7001 Boulevard 26, Suite 310
North Richmond Hills, Texas 76180

(3) provide the use determination application number for the application for which the use determination was issued;

Use Determination Application 07-11971

(4) request commission consideration of the use determination; and

This letter is a formal request to the Commission for consideration of the purported negative use determination.

(5) explain the basis for the appeal.

In 2008, Borger applied for a pollution control use determination for two heat recovery steam generators (HRSGs) and support systems at its Blackhawk Station, which is a cogeneration facility which avoids the use of traditional steam boilers. Borger's equipment meets or exceeds regulations issued by environmental agencies to control or reduce air pollution. *See, e.g.*, 30 Tex. Admin. Code § 117.3010; § 106.512; 40 CFR 60.44 subpart DA & DB; 40 C.F.R. § 50.11.

Specifically, the equipment's increased thermal efficiency, as compared to a traditional steam boiler, reduces the fuel needs for the same output, while reducing associated air emissions such as nitrogen oxides (NOx). In addition, the duct burners inside the HRSGs, as designed, may further reduce plant air emissions with additional NOx controls, but such air emissions reductions occur in addition to the efficiency-based reductions.

In 2008, the Executive Director granted a 100% positive use determination for Borger's HRSGs.

However, Hutchinson County Appraisal District appealed to the Commission regarding the positive use determination, and that appeal eventually resulted in the July 10, 2012 letter that purports to issue a negative use determination on Borger's application.

In 2008, the Executive Director correctly applied the law to Borger's facility, as well as to many other similar facilities. In 2012, the Executive Director failed to correctly interpret the controlling statute and applicable regulations. Among other things,

- The Executive Director has not lawfully issued a negative use determination.
- The Executive Director misunderstands the nature, function, and pollution control benefits of Borger's HRSGs. The Executive Director has failed to offer a reasoned and timely explanation for finding 0% pollution control and for rejecting Borger's justifiable

expectations that its equipment was 100% pollution control property as properly determined in 2008.

- The HRSGs at Borger's facility satisfy the statutory definition of 100% pollution control and otherwise fully comply with applicable regulations. Alternatively, the HRSGs are entitled to a partial use determination.

- The Executive Director has applied the wrong administrative rules. On January 1, 2008, Borger was entitled to a 100% positive use determination under Tier II. Alternatively, the appropriate administrative rules were those in effect when Borger filed its application. The 2010 rules are invalid and have no force or effect relative to Borger's application. As applied to Borger, the 2010 rules are unconstitutional because they are an unconstitutional retroactive application of law and violate both due process and equal protection.

- The Executive Director has acted arbitrarily and capriciously, has treated similar property in conflicting ways despite statutory and constitutional prohibitions to the contrary, and has deprived Borger of due process and equal protection.

We look forward to briefing this matter in full and would greatly appreciate the opportunity to address the Commission in person.

Please note that we are providing copies of this notice of appeal to the individuals and entities identified on the Commission's mailing list from Docket No. 2008-0832-MIS-U.

Respectfully submitted,

Edward Kliewer III

with permission Osmara Kennedy

Edward Kliewer III
Counsel for Borger Energy Associates, LP

EK/sbc

cc: mailing list from Docket No. 2008-0832-MIS-U

****
*** TX REPORT ***
****

TRANSMISSION OK

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FULBRIGHT
& Jaworski L.L.P.
Attorneys at Law

FULBRIGHT & JAWORSKI

300 Convent Street, Suite 2100 • San Antonio, Texas 78205-3792
www.fulbright.com

FACSIMILE TRANSMISSION

DATE: July 31, 2012 **MATTER NUMBER:** 13320 08013320 (Borger)

RECIPIENT(S)	FAX NO.:	PHONE NO.:
Bridget C. Bohac, Chief Clerk TCEQ	512-239-3311	

FROM: Edward Kliewer III **FLOOR:** 22J9

PHONE: (210) 270-7144 **FAX:** (210) 270-7205

RE: Appeal of Purported Negative use Determination
Borger Energy Associates, LP

NUMBER OF PAGES INCLUDING COVER PAGE: 4

MESSAGE:

EXHIBIT B

TCEQ Docket No. 2008-0832-MIS-U

In The Texas Commission on Environmental Quality

APPEAL OF THE EXECUTIVE DIRECTOR'S NEGATIVE USE DETERMINATION ISSUED TO BORGER ENERGY ASSOCIATES, L.P. FOR THE BLACKHAWK COGENERATION FACILITY

USE DETERMINATION APPLICATION NO. 07-11971

AFFIDAVIT OF RHONDA GUERINGER

(EXHIBIT "B" TO REPLY BRIEF OF APPELLANT, BORGER ENERGY ASSOCIATES, LP)

FULBRIGHT & JAWORSKI L.L.P.
Edward Kliewer III
State Bar No. 11570500
Thomas A. Countryman
State Bar No. 04888100
Rosemary Kanusky
State Bar No. 00790999
300 Convent, Suite 2200
San Antonio, Texas 78205
Telephone: 210.224.5575
Telecopier: 210.270.7205
Counsel for Appellant, Borger Energy Associates, LP

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

STATE OF TEXAS)
)
COUNTY OF BEXAR)

BEFORE ME, the undersigned authority, personally appeared RHONDA GUERINGER, a person known by me to be fully competent and qualified in all respects to make this Affidavit, who, after being by me first duly sworn, deposed as follows:

1.

I am a paralegal with Fulbright & Jaworski L.L.P., the law firm representing Applicant/Appellant Borger Energy Associates, LP ("Borger"). I am over twenty-one (21) years of age, of sound mind, and have never been convicted of a felony or other crime involving moral turpitude. I am fully competent, authorized and qualified to make this Affidavit, and the information set forth herein is based upon my own personal knowledge gained while in the course and scope of my involvement with Borger and while investigating facts pertinent to this appeal.

2.

This Affidavit is made in support of Borger's Use Determination Application No. 07-11971 ("Application") seeking a Positive Use Determination (and related *ad valorem* property tax exemption) for Borger's heat recovery steam generators ("HRSGs"); and in response to, and appeal of, the 100% Negative Use Determination on the Application which was ultimately rendered by the Executive Director ("ED") of the Texas Commission on Environmental Quality ("TCEQ").

3.

In the course and scope of my investigation of facts pertinent to this appeal, I obtained from the TCEQ's own website, copies of 100% Positive Use Determinations for HRSGs issued by or on behalf of the TCEQ Executive Director ("ED") on behalf of TCEQ, owned and/or operated by each of the following:

1. Bastrop Energy Partners LP[1]
2. Baytown Energy Center LP[2]
3. Calpine Corporation – Magic Valley[3]
4. Channel Energy Center, LP[4]

---

[1] A true copy of the TCEQ's Positive Use Determination letter to Bastrop Energy Partners LP dated May 1, 2008, is attached as Exhibit "1" and incorporated herein for reference purposes.

[2] A true copy of the TCEQ's Positive Use Determination letter to Baytown Energy Center LP dated May 1, 2008, is attached as Exhibit "2" and incorporated herein for reference purposes.

[3] A true copy of the TCEQ's Positive Use Determination letter to Calpine Corporation – Magic Valley dated May 1, 2008, is attached as Exhibit "3" and incorporated herein for reference purposes.

[4] A true copy of the TCEQ's Positive Use Determination letter to Channel Energy Center, LP dated May 1, 2008, is attached as Exhibit "4" and incorporated herein for reference purposes.

5. Corpus Christi Cogeneration LP[5]
6. Deer Park Energy Center LP[6]
7. Florida Power and Light (FPLE Forney Power Plant)[7]
8. Frontera Generation LP[8]
9. Gentex Power Corporation[9]
10. GS Electric Generating Cooperative, Inc. (and Denver City Energy Assoc., LP)[10]
11. Guadalupe Power Partners LP[11]
12. Lamar Power Partners, LP[12]
13. Navasota Odessa Energy Partners LP[13]
14. NRG Texas Power - Wharton[14]
15. NRG Texas-Cedar Bayou IV[15]
16. Odessa-Ector Power Partners, LP[16]
17. Pasadena Cogeneration[17]
18. Rio Nogales Power Project LP[18]
19. Tenaska Frontier Partners, Ltd[19]

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[5] A true copy of the TCEQ's Positive Use Determination letter to Corpus Christi Cogeneration LP dated May 1, 2008, is attached as Exhibit "5" and incorporated herein for reference purposes.

[6] A true copy of the TCEQ's Positive Use Determination letter to Deer Park Energy Center LP dated May 1, 2008, is attached as Exhibit "6" and incorporated herein for reference purposes.

[7] A true copy of the TCEQ's Positive Use Determination letter to Florida Power and Light (FPLE Forney LP) dated May 1, 2008, is attached as Exhibit "7" and incorporated herein for reference purposes.

[8] A true copy of the TCEQ's Positive Use Determination letter to Frontera Generation LP dated May 1, 2008, is attached as Exhibit "8" and incorporated herein for reference purposes.

[9] A true copy of the TCEQ's Positive Use Determination letter to Gentex Power Corporation dated May 1, 2008, is attached as Exhibit "9" and incorporated herein for reference purposes.

[10] A true copy of the TCEQ's Positive Use Determination letter to GS Electrical Generating Cooperative Inc. dated May 1, 2008, is attached as Exhibit "10" and incorporated herein for reference purposes.

[11] A true copy of the TCEQ's Positive Use Determination letter to Guadalupe Power Partners LP dated May 1, 2008, is attached as Exhibit "11" and incorporated herein for reference purposes.

[12] A true copy of the TCEQ's Positive Use Determination letter to Lamar Power Partners, LP dated May 1, 2008, is attached as Exhibit "12" and incorporated herein for reference purposes.

[13] A true copy of the TCEQ's Positive Use Determination letter to Navasota Odessa Energy Partners LP dated May 1, 2008, is attached as Exhibit "13" and incorporated herein for reference purposes.

[14] A true copy of the TCEQ's Positive Use Determination letter to NRG Texas Power LLC dated May 1, 2008, is attached as Exhibit "14" and incorporated herein for reference purposes.

[15] A true copy of the TCEQ's Positive Use Determination letter to NRG Texas Power LLC dated May 1, 2008, is attached as Exhibit "15" and incorporated herein for reference purposes.

[16] A true copy of the TCEQ's Positive Use Determination letter to Odessa-Ector Power Partners, LP dated May 1, 2008, is attached as Exhibit "16" and incorporated herein for reference purposes.

[17] A true copy of the TCEQ's Positive Use Determination letter to Pasadena Cogeneration dated May 1, 2008, is attached as Exhibit "17" and incorporated herein for reference purposes.

[18] A true copy of the TCEQ's Positive Use Determination letter to Rio Nogales Power Project LP dated May 1, 2008, is attached as Exhibit "18" and incorporated herein for reference purposes.

[19] A true copy of the TCEQ's Positive Use Determination letter to Tenaska Frontier Partners Ltd. dated May 1, 2008, is attached as Exhibit "19" and incorporated herein for reference purposes.

Also, in the course and scope of my investigation of facts pertinent to this appeal, I obtained, from the TCEQ's own website, true copies of the following documents:

1. Agenda of the Texas Commission on Environmental Quality, dated February 25, 2009, that references (on page 4, Item 7) the six Tier IV appealed use determinations issued by the Executive Director regarding Tenaska Gateway Partners, Ltd., Freestone Power Generation LP, Borger Energy Associates, LP, Brazos Valley Energy L.P., Freeport Energy Center, L.P., and Navasota Wharton Energy Partners LP, and states the item is continued to a future agenda to be determined by the Office of the General Counsel.[20]

2. Minutes of the Tax Relief for Pollution Control Property Advisory Committee Meeting, dated February 15, 2012, that references (on page 2, No. 1. Old Business) Mr. Don Lee's request for an update on the HRSG applications, and Mr. Minor Hibbs' response.[21] This appears to have been the most recent TCEQ meeting prior to June 29, 2012, to discuss this appeal, and it shows that the subject Application affirmatively was not on TCEQ's agenda at the time.

3. I have made a diligent search of TCEQ's Agendas on its website, and when remand of this matter was ostensibly authorized by TCEQ's General Counsel on June 29, 2012, neither the subject Application nor its appeal appears to have been on any current or pending TCEQ Agenda.

Further Affiant sayeth not.

Rhonda Gueringer

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this, the 23rd day of October, 2012.

BEVERLY S. PIZZURRO
Notary Public
State of Texas
My Comm. Exp. 04-24-2013

Notary Public

[20] A true and correct copy of the Agenda dated February 25, 2009, is attached as Exhibit "20" and incorporated herein for reference purposes.

[21] A true and correct copy of the Minutes dated February 15, 2012, are attached as Exhibit "21" and incorporated herein for reference purposes.

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-12001, filed by:

BASTROP ENERGY PARTNERS LP
BASTROP GENERATION PLANT
125 OLD BASTROP RD
CEDAR CREEK TX 78612

The pollution control property/project listed in the Use Determination Application is:

This facility has two combustion turbine generators coupled with two thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a use determination for the HRSGs and the steam turbine. The application requests a Tier IV determination.

The outcome of the review is:

A 100% positive use determination for the two Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Executive Director

May 1, 2008
Date

EXHIBIT 1

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11970, filed by:

BAYTOWN ENERGY CENTER LP
BAYTOWN ENERGY CENTER LP
8605 FM 1405 ROAD
BAYTOWN TX 77521

The pollution control property/project listed in the Use Determination Application is:

This facility has three thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the three Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Executive Director

May 1, 2008
Date

EXHIBIT 2

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11965, filed by:

CALPINE CORPORATION
CALPINE MAGIC VALLEY GENERATION
3333 N MCOLL RD
EDINBURG TX 78539

The pollution control property/project listed in the Use Determination Application is:

This facility has two thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the two Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Executive Director

May 1, 2008
Date

EXHIBIT 3

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-12016, filed by:

CHANNEL ENERGY CENTER LP
CHANNEL ENERGY CENTER LP
12000 LAWNDALE LCR GT 5
PASADENA TX 77017

The pollution control property/project listed in the Use Determination Application is:

This facility has two thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbine.

The outcome of the review is:

A 100% positive use determination for the two Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Executive Director

May 1, 2008
Date

EXHIBIT 4

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application 07-11968, filed by:

CORPUS CHRISTI COGENERATION LP
CORPUS CHRISTI COGENERATION
3952 BUDDY LAWRENCE DR
CORPUS CHRISTI TX 78407

The pollution control property/project listed in the Use Determination Application is:

This facility has two thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the two Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Executive Director

Date

EXHIBIT 5

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, **07-11967**, filed by:

DEER PARK ENERGY CENTER LP
DEER PARK ENERGY CENTER
5665 HWY 225
HOUSTON TX 77536

The pollution control property/project listed in the Use Determination Application is:

This facility has four thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the four Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Executive Director

Date

EXHIBIT 6

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11916, filed by:

FPLE FORNEY LP
FPLE FORNEY POWER PLANT
900 W BROAD ST
FORNEY TX 75126

The pollution control property/project listed in the Use Determination Application is:

This facility has six thermally efficient heat recovery steam generators (HRSGs) and two enhanced steam turbines. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the six Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the two steam turbines. The use of the steam turbines does not provide an environmental benefit at the site. The steam turbines are not considered to be pollution control equipment.

Executive Director

Date 10/1/2008

EXHIBIT 7

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, **07-12000**, filed by:

FRONTERA GENERATION LTP
FRONTERA GENERATION PLANT
320 S GOODWIN RD
MISSION TX 78572

The pollution control property/project listed in the Use Determination Application is:

This facility has two combustion turbine generators coupled with two thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the three HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the two Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Executive Director

May 1, 2008
Date

EXHIBIT 8

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,
Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11964, filed by:

GENTEX POWER CORPORATION
LOST PINES
HWY 21 NE 4.5 MI
BASTROP TX 78602

The pollution control property/project listed in the Use Determination Application is:

This facility has two thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the two Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Executive Director

Date

EXHIBIT 9

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, **07-11972**, filed by:

GS ELECTRICAL GENERATING COOP & DENVER
MUSTANG STATION UNITS 1, 2, & 3
1937 CR 390
DENVER CITY TX 79323

The pollution control property/project listed in the Use Determination Application is:

This facility has two thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the two Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Executive Director

May 2, 2008
Date

EXHIBIT 10

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11943, filed by:

GUADALUPE POWER PARTNERS LP
GUADALUPE POWER PARTNERS
5740 WEIL RD
MARION TX 78124

The pollution control property/project listed in the Use Determination Application is:

This facility has four combustion turbine generators coupled with four thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the four Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Executive Director

Date

EXHIBIT 11

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11917, filed by:

LAMAR POWER PARTNERS
FPLE PARIS POWER PLANT
HWY 137 1 MI S OF 286
PARIS TX 75461

The pollution control property/project listed in the Use Determination Application is:

This facility has four thermally efficient heat recovery steam generators (HRSGs) and two enhanced steam turbines. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the four Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the two steam turbines. The use of the steam turbines does not provide an environmental benefit at the site. The steam turbines are not considered to be pollution control equipment.

Executive Director

Nov. 1, 2008
Date

EXHIBIT 12

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11927, filed by:

NAVASOTA ODESSA ENERGY PARTNERS LP
QUAIL RUN
2950 E INTERSTATE 20
ODESSA TX 79766

The pollution control property/project listed in the Use Determination Application is:

This facility has four thermally efficient heat recovery steam generators (HRSGs) and two steam turbines. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the four Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the two steam turbines. The use of the steam turbines does not provide an environmental benefit at the site. The steam turbines are not considered to be pollution control equipment.

Executive Director

Date

EXHIBIT 13

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-12003, filed by:

NRG TEXAS POWER LLC
CEDAR BAYOU IV
7705 OLD WEST BAY RD
BAYTOWN TX 77520

The pollution control property/project listed in the Use Determination Application is:

This facility has combustion turbine generators coupled with thermally efficient heat recovery steam generators (HRSGs) and steam turbines. This application is a Tier IV application seeking a use determination for the HRSGs and the steam turbine. The application requests a Tier IV determination.

The outcome of the review is:

A 100% positive use determination for the Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbines. The use of the steam turbines does not provide an environmental benefit at the site. The steam turbines are not considered to be pollution control equipment.

Executive Director

May 1 2008
Date

EXHIBIT 14

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, **07-12005**, filed by:

NRG TEXAS POWER LLC
TH WHARTON
16301 SH 249
HOUSTON TX 77064

The pollution control property/project listed in the Use Determination Application is:

This facility has combustion turbine generators coupled with thermally efficient heat recovery steam generators (HRSGs). This application is a Tier IV application seeking a use determination for the HRSGs. The application requests a Tier IV determination.

The outcome of the review is:

A 100% positive use determination for the Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

Executive Director

Date

EXHIBIT 15

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11942, filed by:

ODESSA-ECTOR POWER PARTNERS
ODESSA-ECTOR POWER PARTNERS
2200 E I-20 SERVICE RD S
ODESSA TX 79766

The pollution control property/project listed in the Use Determination Application is:

This facility has four combustion turbine generators coupled with four thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the four Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Executive Director

Date

EXHIBIT 16

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-12015, filed by:

PASADENA COGENERATION
PASADENA COGENERATION I & II
955 PHILLIPS RD
PASADENA TX 77506

The pollution control property/project listed in the Use Determination Application is:

This facility has three thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbine.

The outcome of the review is:

A 100% positive use determination for the three Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Executive Director

Date

EXHIBIT 17

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11921, filed by:

RIO NOGALES POWER PROJECT LP
RIO NOGALES POWER PROJECT
711 RIO NOGALES DR
SEGUIN TX 78155

The pollution control property/project listed in the Use Determination Application is:

This facility has three combustion turbine generators coupled with three thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the three HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the three Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Executive Director

May 1 2018
Date

EXHIBIT 18

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11915, filed by:

TENSKA FRONTIER PARTNERS LTD
TENASKA FRONTIER GENERATION STAT
17500 HWY 30
SHIRO TX 77876

The pollution control property/project listed in the Use Determination Application is:

This facility has three combustion turbine generators coupled with three thermally efficient heat recovery steam generators (HRSGs) and one enhanced steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the three Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

Executive Director

May 2 2003
Date

EXHIBIT 19

AGENDA

Wednesday, February 25, 2009

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

9:30 A.M.
12100 Park 35 Circle
Room 201S, Bldg. E

PROPOSALS FOR DECISION

Item 1. **TCEQ Docket No. 2003-0729-MSW; SOAH Docket No. 582-04-0975.** Consideration of the Administrative Law Judges' Proposal for Decision and Order regarding the application of **Regional Land Management Services, Ltd.** for a Type I municipal solid waste landfill permit pursuant to rules of the Texas Commission on Environmental Quality in 30 TAC Chapter 330 authorizing the disposal of municipal solid waste, construction-demolition waste, and special waste. The proposed facility would be located south of State Highway 359, approximately 11 miles east of the intersection of Loop 20 and Highway 359 and 3.6 miles east of the city limits of the City of Laredo, in **Webb County,** Texas. The Commission will also consider timely public comments and the Executive Director's Response to such comments; the application and related filings, exceptions and replies. (Anthony Tatu)

Adopt the ALJ's Proposed Order granting Regional Land Management's permit with the following changes: a) Delete Finding of Fact No. 59 as recommended by the ALJ; b) Modify Ordering Provision No. 2 to eliminate that portion of the provision requiring the installation of a groundwater monitoring system and implementation of a groundwater sampling and analysis plan as recommended by the ALJ; c) Delete Finding of Fact No. 127 and delete the clause "Even though the four state-listed species that may use the proposed Ponderosa Landfill site are not included in the Texas Endangered Species Act," in Finding of Fact No. 128, as being contrary to the Commission's interpretation of its MSW rules and the precedent in the Blue Flats and TanTerra contested case matters; d) Modify Finding of Fact No. 119 and add a new finding of fact and conclusions of law regarding unstable areas, faults, wetlands, floodplains, hydrology, leachate collection, transportation, buffer zones, screening, and the permit term as set forth in the Applicant's exceptions and as recommended by the ALJ; and e) Modify Conclusion of Law No. 6 to read "Tex. Admin. Code" rather than "Tex. Admin Coce." Approve the issuance of the Executive Director's revised permit and adopt the Executive Director's Response to Comments. BS/LS; all agree.

Item 2. **TCEQ Docket No. 2008-0559-MWD; SOAH Docket No. 582-08-4359.** Consideration of the Administrative Law Judge's Proposal for Decision and Order regarding the application of the **City of Castroville** for a major amendment to Texas Land Application Permit (TLAP) Permit No. WQ0010952001 to change from disposal via irrigation at a daily average not to exceed 350,000 gallons per day to discharge into waters in the state at a daily average flow not to exceed 900,000 gallons per day. The wastewater treatment facility is located approximately 0.9 mile southwest of the intersection of U.S. Highway 90 and Farm-to-Market Road 1343 in **Medina County,** Texas. The Commission will also consider timely public comments and the Executive Director's Response to such comments; the application, and related filings, exceptions and replies. (D.A. Chris Ekoh, Amewusika Clara Dake)

EXHIBIT 20

Adopt the ALJ's proposed Order; adopt the Executive Director's exceptions modifying Conclusion of Law No. 1; correct the typographical error in Finding of Fact No. 4 to read "is located" and Conclusion of Law No. 1 to read "wastewater treatment facilities"; issue the draft permit; and adopt the Executive Director's Response to Comments. BS/BG; LS voting no.

Item 3. TCEQ Docket No. 2007-1653-PST-E; SOAH Docket No. 582-08-4453. Consideration of the Administrative Law Judge's Proposal for Decision and Default Order assessing administrative penalties and requiring certain actions of **Lupe Mercado** in **DeWitt County**, Texas; Petroleum Storage Tank Facility ID No. 38988; regarding petroleum storage tank violations pursuant to 30 Tex. Admin. Code § 334 and Tex. Water Code chs. 7 and 26. The Commission will also consider timely filed exceptions and replies. (Anna M. Cox)

Remanded to the Executive Director. LS/BS; all agree.

HEARING REQUESTS/REQUESTS FOR RECONSIDERATION

Item 4. Docket No. 2008-1888-UIC. Consideration of an application by **Uranium Energy Corp. (UEC)** for a for new Underground Injection Control (UIC) Permit No. UR03075, and of UEC's request to the TCEQ for designation of an exempt aquifer. The facility where the proposed activity would take place is located approximately 13 miles north of the city of Goliad, approximately 0.9 mile east of the intersection of State Highway 183 and Farm-to-Market Road 1961 in **Goliad County**, Texas. The permit would authorize UEC to construct and operate Class III injection and production wells for recovery of uranium from a certain portion of the Goliad Formation within the permit area. The area within the proposed permit boundary is approximately 1,139.4 contiguous acres. The application also includes a request for an aquifer exemption. The requested aquifer exemption would apply from a depth of 45 to 404 feet and would extend over an area of approximately 423.8 acres within the proposed permit area in Goliad County. The Commission will also consider Requests for Hearing or Reconsideration, Related Responses and replies, public comment, and the Executive Director's Response to Comments. (David Murry, Shana Horton, Don Redmond)

Grant the hearing requests of Goliad County, Goliad County Groundwater Conservation District, Goliad County Farm Bureau, Ander-Weser Volunteer Fire Department, St. Peter's Lutheran Church, Mary and Thomas Anklam, Raymond and Karon Arnold, Aldon and Brenda Bade, Elizabeth and Mickey Beard, Otto and Ruth Bluntzer, Matt and Erika Bochat, Gene and Reta Brown, John and Pearl Caldwell, Lynn and Ginger Cook, LuAnn and Craig Duderstadt, Darwyn and Waynell Duderstadt, Wilburn and Doris Duderstadt, Douglas and Wanda Franke, Joel and Joyce Grieser, Brenda Hardt, Ernest and Frances Hausman, Gaylon and Barbara Kornfuehrer, Mr. and Mrs. Jason Mikeska, Ricki McKinney, Susan and Weldon Orr, Margaret Rutherford, Wayne and Margie Smith, and Carol and Dorian Thurk; refer the following issues to SOAH: 1) Whether the use and installation of the injection wells are in the public interest under Texas Water Code 27.051(a). Public interest in regard to this issue includes whether UEC's mining operation or restoration activities will adversely impact the public interest by unreasonably reducing the amount of groundwater available for permitting by the Goliad County Groundwater Conservation District 2) Does the Applicant's compliance history require denial of the application under Tex. Water Code § 27.051(e) and 30 TAC Chapter 60 3) Does the application adequately and accurately describe baseline conditions of the groundwater in the proposed permitted area under applicable requirements of 30 TAC Chapter 331 4) Does the application meet all applicable criteria of 30 TAC § 331.122, related to required consideration by the commission prior to issuing a Class III Injection Well

Area Permit 5) Has the Applicant demonstrated that the proposed exempted aquifer meets the applicable criteria of 30 TAC § 331.13 6) Is the application sufficiently protective of groundwater quality 7) Does the application adequately characterize and describe the geology and hydrology in the proposed permit area, including fault lines, under the applicable rules 8) Does the geologic and hydraulic properties of the proposed permit area indicate that the Applicant will be able to comply with rule requirements 9) Does the Applicant meet the applicable requirements for financial assurance under Texas Water Code §§ 27.051, 27.073, and 30 TAC Chapters 37 and 331 10) Is the application sufficiently protective of surface water quality 11) Are local roadways sufficient to handle traffic to and from the proposed facility 12) Whether UEC's proposal for restoration of groundwater to baseline levels as contained in the permit application is reasonable and adequate 13) Will the Applicant's proposed activities negatively impact livestock and wildlife, including endangered species 14) Will the Applicant's proposed activities negatively impact the use of property 15) Will the Applicant's proposed activities adversely affect public health and welfare 16) Whether the proposed mining is in the recharge zone of the Gulf Coast Aquifer (Evangeline component) 17) Whether the Gulf Coast Aquifer is a confined aquifer in the areas of Goliad County where UEC will Conduct UIC activities 18) Whether mining fluids will migrate vertically or horizontally and contaminate an USDW (underground source of drinking water) 19) Whether there are any USDWs within the injection zones proposed by UEC 20) Whether any USDWs within Goliad County will be adversely impacted by UEC's proposed in situ uranium operations 21) Whether there is a "practical, economic and feasible alternative to an injection well reasonably available" within the meaning of that term as set forth in TWC § 27.051(d)(2); set a hearing duration of one year; and direct the Executive Director to participate as a party. BS/LS; all agree.

Item 5. **Docket No. 2006-0031-AIR**. Consideration of Application by **Invista S.A.R.L.** for Renewal of Air Quality Permit No. 20011 to authorize the continued operation of its processing unit which produces dodecanedioic acid and usable by-products from butadiene, and includes organic compounds, carbon monoxide, nitrogen oxides, ammonia, sulfur dioxide, particulate matter, nitric acid, and organic acids. The facility is located at 2695 Old Bloomington Road North in Victoria, **Victoria County**, Texas. The Commission will also consider Requests for Hearing or Reconsideration, Related Responses and replies, public comment, and the Executive Director's Response to Comments.(Lon Morris, Tim Eubanks)

Deny the hearing request of Sharon Harper and Steve Stevenson; issue the Permit Renewal of Air Quality Permit No. 20011; and adopt the Executive Director's Amended Response to Comments. BS/LS; all agree.

Item 6. **Docket No. 2008-1446-MSW**. Consideration of an application by **Darling International, Inc.** for a new Type V-GG Municipal Solid Waste permit to authorize a grease trap waste processing facility (Proposed Permit No. 2353). The Applicant proposes to locate the facility at 3701 Schalker Street, 850 feet south of Cavalcade Street, in Houston, **Harris County**, Texas. This permit, if approved, would authorize the proposed facility to store and process grease trap waste resulting from, or incidental to, municipal, community, commercial, institutional and recreational activities and to recycle recovered materials. The Commission will also consider Requests for Hearing or Reconsideration, Related Responses and replies, public comment, and the Executive Director's Response to Comments. (Jeff Holderread, Shana Horton)

Deny the request for hearing and reconsideration submitted by Downstream Environmental, LLC; revise the Executive Director's Response to Comments by deleting the reference to grease trap waste related to industrial activities in paragraph two on page two and adopt the Response to Comments as revised;

approve issuance of Proposed Permit No. 2353 as recommended by the Executive Director. BS/LS; all agree.

USE DETERMINATION MATTER

Item 7. **Docket Nos. 2008-0830-MIS-U, 2008-0831-MIS-U, 2008-0832-MIS-U, 2008-0849-MIS-U, 2008-0850-MIS-U, and 2008-0851-MIS-U.** Consideration of the appeals filed by Rusk County Appraisal District, Freestone Central Appraisal District, Hutchinson County Appraisal District, Fort Bend Central Appraisal District, Brazoria County Appraisal District, and Wharton County Appraisal District with regard to six use determinations issued by the Executive Director regarding **Tenaska Gateway Partners, Ltd. (Rusk County), Freestone Power Generation LP (Freestone County), Borger Energy Associates, LP (Hutchinson County), Brazos Valley Energy L.P. (Fort Bend County), Freeport Energy Center, L.P. (Brazoria County),** and **Navasota Wharton Energy Partners LP (Wharton County).** The use determinations were assigned Application Numbers 07-11914, 07-11966, 07-11971, 07-11969, 07-11994 and 07-11926. The Commission will also consider all response and reply briefs.

Item continued to a future agenda to be determined by the Office of General Counsel.

AGRICULTURAL ENFORCEMENT AGREED ORDER

Item 8. **Docket No. 2008-1146-AGR-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Klaas Talsma dba Talsma Dairy in Erath County;** RN102313384; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Thomas Jecha, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

AIR QUALITY ENFORCEMENT AGREED ORDERS

Item 9. **Docket No. 2008-1458-AIR-E.** Consideration of an Agreed Order assessing administrative penalties against **Merisol USA LLC in Harris County;** RN100214576; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Suzanne Walrath, Cari-Michel La Caille)

Approve the Agreed Order. BS/LS; all agree.

Item 10. **Docket No. 2008-1230-AIR-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **ExxonMobil Oil Corporation** in **Jefferson County;** RN102450756; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Raymond Marlow, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 11. **Docket No. 2008-1561-AIR-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **INEOS USA LLC in Brazoria County;**

RN100238708; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Jeremy Escobar, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 12. Docket No. 2008-1283-AIR-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Honeywell International Inc. in Orange County**; RN100217405; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Kirk Schoppe, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 13. Docket No. 2008-1273-AIR-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Hood Flexible Packaging Corporation** in **Smith County**; RN100218361; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Jeremy Escobar, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 14. Docket No. 2008-1469-AIR-E. Consideration of an Agreed Order assessing administrative penalties against **Mitsubishi Caterpillar Forklift America Inc.** in **Harris County**; RN100219161; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Danielle Porras, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 15. Docket No. 2008-1519-AIR-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Johnson Plate and Tower Fabrication, Inc. in El Paso County**; RN100819242; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (J. Craig Fleming, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 16. Docket No. 2008-1024-AIR-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **The Imaging Bureau, Inc.** in **Tarrant County**; RN100777648; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Thomas Jecha, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 17. Docket No. 2008-0687-AIR-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **ConocoPhillips Company** in **Brazoria County**; RN101619179; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (James Nolan, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 18. Docket No. 2008-1116-AIR-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Overwraps Packaging, L.P. in Dallas County**; RN100804657; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Jorge Ibarra, P.E., Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 19. Docket No. 2008-1251-AIR-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Ofelia Bosquez dba Wenchos Gas & Food Mart in El Paso County**; RN101652691; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (John Muennink, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 20. Docket No. 2008-1349-AIR-E. Consideration of an Agreed Order assessing administrative penalties against **ConocoPhillips Pipe Line Company** in **Lamb County**; RN100213495; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Miriam Hall, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 21. Docket No. 2008-1298-AIR-E. Consideration of an Agreed Order assessing administrative penalties against **E. I. du Pont de Nemours and Company** in **Jefferson County**; RN100216035; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Raymond Marlow, Cari-Michel La Caille)

Approve the Agreed Order. BS/LS; all agree.

Item 22. Docket No. 2007-1508-AIR-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **BASF Corporation** in **Brazoria County**; TCEQ ID No. RN100218049; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Laurencia Fasoyiro, Lena Roberts)

Approve the Agreed Order. BS/LS; all agree.

Item 23. **Docket No. 2008-0921-AIR-E**. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Chevron Phillips Chemical Company LP** in **Harris County**; RN103919817; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Miriam Hall, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 24. **Docket No. 2008-1528-AIR-E**. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Whirlwind Steel Buildings, Inc.** in **Harris County**; RN100543917; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Trina Grieco, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 25. **Docket No. 2008-1231-AIR-E**. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **ExxonMobil Oil Corporation** in **Jefferson County**; RN100542844; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (John Muennink, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 26. **Docket No. 2008-1416-AIR-E**. Consideration of an Agreed Order assessing administrative penalties against **Greif Packaging LLC** in **Harris County**; RN102079662; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Kirk Schoppe, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 27. **Docket No. 2007-1531-AIR-E**. Consideration of an Agreed Order assessing administrative penalties against **E. I. du Pont de Nemours and Company** in **Harris County**; TCEQ ID No. RN100225085; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Laurencia Fasoyiro, Lena Roberts)

Approve the Agreed Order. BS/LS; all agree.

Item 28. **Docket No. 2008-1121-AIR-E**. Consideration of an Agreed Order assessing administrative penalties against **INEOS USA LLC dba INEOS Polyethylene North America** in **Harris County**; RN100229905; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Suzanne Walrath, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 29. **Docket No. 2008-1205-AIR-E**. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Vopak Terminal Deer Park, Inc.** in **Harris County**; RN100225093; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Nadia Hameed, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 30. **Docket No. 2008-1625-AIR-E**. Consideration of an Agreed Order assessing administrative penalties against **Frontera Generation Limited Partnership** in **Hidalgo County**; RN102344645; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Jeremy Escobar, Cari-Michel La Caille)

Approve the Agreed Order. BS/LS; all agree.

Item 31. **Docket No. 2008-0822-AIR-E**. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Lucite International, Inc.** in **Jefferson County**; RN102736089; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (James Nolan, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 32. **Docket No. 2008-1269-AIR-E**. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Flint Hills Resources, LP** in **Jefferson County**; RN100217389; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Nadia Hameed, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 33. **Docket No. 2008-1439-AIR-E**. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Lufkin Industries, Inc.** in **Angelina County**; RN100221613; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Jeremy Escobar, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 34. **Docket No. 2008-1701-AIR-E**. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Permian Enterprises, Ltd.** in **Ector County**; RN105088629; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (John Muennink, Cari-Michel La Caille)

Approve the Agreed Order. BS/LS; all agree.

Item 35. **Docket No. 2008-1180-AIR-E**. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **PD Glycol LP in Jefferson County**; RN100825413; for air quality violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (J. Craig Fleming, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

DRY CLEANER ENFORCEMENT DEFAULT ORDER

Item 36. **Docket No. 2006-1316-DCL-E**. Consideration of a Default Order assessing administrative penalties against **Fairmont Cleaners, Inc. dba Fairmont Cleaners in Harris County**; TCEQ ID No. RN104086384; for dry cleaner drop station registration violations pursuant to Tex. Health & Safety Code ch. 374, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality. (Tammy L. Mitchell, Lena Roberts)

Approve the Default Order. BS/LS; all agree.

FIELD CITATIONS

Item 37. **Docket No. 2008-1500-PST-E**. Consideration of a Field Citation assessing administrative penalties and requiring certain actions of **HNQ, Inc. dba Kool Corner in Travis County**; RN101496644; for petroleum storage tank violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Melissa Keller, Bryan Sinclair)

Approve the Field Citation. BS/LS; all agree.

Item 38. **Docket No. 2008-1573-PST-E**. Consideration of a Field Citation assessing administrative penalties and requiring certain actions of **50'S CLASSIC CAR WASH OF LUBBOCK, INC. dba 50's Classic Car Wash in Lubbock County**; RN102377553; for petroleum storage tank violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Melissa Keller, Bryan Sinclair)

Approve the Field Citation. BS/LS; all agree.

Item 39. **Docket No. 2008-1507-WQ-E**. Consideration of a Field Citation assessing administrative penalties and requiring certain actions of **Larry Oates Construction Company dba Fresenius Medical Care Rockport in Aransas County**; RN105573141; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Melissa Keller, Bryan Sinclair)

Approve the Field Citation. BS/LS; all agree.

INDUSTRIAL WASTE DISCHARGE ENFORCEMENT AGREED ORDERS

Item 40. Docket No. 2008-1442-IWD-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Altivia Corporation** in **Harris County**; RN102076601; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Lanae Foard, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 41. Docket No. 2008-1113-IWD-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **AUSTWELL AQUA FARM, INC.** in **Refugio County**; RN103896163; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Steve Villatoro, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 42. Docket No. 2007-2019-IWD-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Carotex, Inc.** in **Jefferson County**; RN100213727; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (J. Craig Fleming, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

LICENSED IRRIGATORS ENFORCEMENT DEFAULT ORDER

Item 43. Docket No. 2007-0875-LII-E. Consideration of a Default Order assessing administrative penalties and requiring certain actions of **Jason S. Goff** in **Tarrant County**; TCEQ ID No. RN103496394; for landscape irrigation installer violations pursuant to Tex. Water Code chs. 7 and 37, Tex. Occ. Code ch. 1903, and the rules of the Texas Commission on Environmental Quality. (Rudy Calderon, Lena Roberts)

Approve the Default Order. BS/LS; all agree.

MULTI-MEDIA MATTER ENFORCEMENT AGREED ORDERS

Item 44. Docket No. 2008-1197-MLM-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Rogelio Ramon** in **Jackson County**; RN105554810; for municipal solid waste and air quality violations pursuant to Tex. Health & Safety Code chs. 361 and 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Clinton Sims, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 45. Docket No. 2008-1300-MLM-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Favelle Favco Cranes USA, Inc.** in **Cameron County**; RN102952983; for air quality and water quality violations pursuant to Tex. Health &

Safety Code ch. 382, Tex. Water Code chs. 7 and 26, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Terry Murphy, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 46. Docket No. 2008-0596-MLM-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Four States Recycling, Inc.** in **Potter County**; RN103204954; for municipal solid waste and industrial solid waste violations pursuant to Tex. Health & Safety Code ch. 361, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Danielle Porras, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

MUNICIPAL SOLID WASTE ENFORCEMENT AGREED ORDER

Item 47. Docket No. 2008-1372-MSW-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Eagle Disposal Company, Inc.** in **Limestone County**; RN105163950; for municipal solid waste violations pursuant to Tex. Health & Safety Code ch. 361, Tex. Water Code chs. 7 and 26, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Danielle Porras, Cari-Michel La Caille)

Approve the Agreed Order. BS/LS; all agree.

MUNICIPAL SOLID WASTE ENFORCEMENT DEFAULT ORDER

Item 48. Docket No. 2007-0866-MSW-E. Consideration of a Default Order assessing administrative penalties and requiring certain actions of **Rodolfo Ruiz** in **Cameron County**; TCEQ ID No. RN104747639; for municipal solid waste violations pursuant to Tex. Water Code ch. 7, Tex. Health & Safety Code ch. 361, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Benjamin O. Thompson, Lena Roberts)

Approve the Default Order. BS/LS; all agree.

MUNICIPAL WASTE DISCHARGE ENFORCEMENT AGREED ORDERS

Item 49. Docket No. 2008-1243-MWD-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the **City of Riesel** in **McLennan County**; RN101920635; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Lanae Foard, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 50. **Docket No. 2007-0787-MWD-E**. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the **City of Port Arthur** in **Jefferson County**; RN101608024; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Pamela Campbell, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 51. **Docket No. 2008-0562-MWD-E**. Consideration of an Agreed Order assessing administrative penalties against **A. K. Interests-Hunterwood, L.P.** in **Harris County**; RN102916814; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (J. Craig Fleming, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 52. **Docket No. 2008-1420-MWD-E**. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the **City of Hallsville** in **Harrison County**; RN102181872; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Steve Villatoro, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

PETROLEUM STORAGE TANKS ENFORCEMENT AGREED ORDERS

Item 53. **Docket No. 2008-1358-PST-E**. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **CHEVRON U.S.A. INC.** in **Karnes County**; RN102483641; for petroleum storage tank violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Mike Pace, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 54. **Docket No. 2008-1387-PST-E**. Consideration of an Agreed Order assessing administrative penalties against **Ata Ur Rahman Khawaja dba M & R Food Market** in **Harris County**; RN102783495; for petroleum storage tank violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Mike Pace, Cari-Michel La Caille)

Approve the Agreed Order. BS/LS; all agree.

Item 55. **Docket No. 2008-1438-PST-E**. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **NEPTUNE INTERNATIONAL INC. and PARKVIEW PROPERTIES, INC. dba Sugar Land Food Mart** in **Fort Bend County**; RN101794782; for petroleum storage tank violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code chs. 7 and 26, and the rules of the Texas Commission on Environmental

Quality, including specifically 30 Texas Administrative Code ch. 60. (Elvia Maske, Cari-Michel La Caille)

Approve the Agreed Order. BS/LS; all agree.

Item 56. Docket No. 2008-1344-PST-E. Consideration of an Agreed Order assessing administrative penalties against **G & J INTERNATIONAL, INC. dba Sunny's Food Mart 3** in **Denton County**; RN101546588; for petroleum storage tank violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code ch. 7, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Steven Lopez, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 57. Docket No. 2008-1487-PST-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **AAEMS LLC dba Kwik Mart 2** in **Tarrant County**; RN102142049; for petroleum storage tank violations pursuant to Tex. Health & Safety Code ch. 382, Tex. Water Code chs. 7 and 26, and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Judy Kluge, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 58. Docket No. 2008-1159-PST-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Gerene Ferguson** in **Lubbock County**; RN101787885; for petroleum storage tank violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (James Nolan, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 59. Docket No. 2006-0504-PST-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Buddy Ford in Harrison County**; TCEQ ID No. RN102063088; for petroleum storage tank violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Jacquelyn Boutwell, Lena Roberts)

Approve the Agreed Order. BS/LS; all agree.

PETROLEUM STORAGE TANKS ENFORCEMENT DEFAULT ORDERS

Item 60. Docket No. 2007-0084-PST-E. Consideration of a Default Order assessing administrative penalties against **Prince Texas Group, Inc.** in **Jefferson County**; TCEQ ID No. RN102409851; for petroleum storage tank violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Rebecca M. Combs, Lena Roberts)

Approve the Default Order. BS/LS; all agree.

Item 61. **Docket No. 2007-0728-PST-E.** Consideration of a Default Order assessing administrative penalties against **FKD Enterprises Inc. dba Lucky Seven Food Mart** in **Bexar County**; TCEQ ID No. RN101765089; for petroleum storage tank violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Anna M. Cox, Lena Roberts)

Approve the Default Order. BS/LS; all agree.

Item 62. **Docket No. 2007-0606-PST-E.** Consideration of a Default Order assessing administrative penalties and requiring certain actions of **Jake Davis in Palo Pinto County**; TCEQ ID No. RN101572832; for petroleum storage tank violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Rudy Calderon, Lena Roberts)

Approve the Default Order. BS/LS; all agree.

PETROLEUM STORAGE TANKS ENFORCEMENT DEFAULT AND SHUTDOWN ORDER

Item 63. **Docket No. 2006-0490-PST-E.** Consideration of a Default and Shutdown Order assessing an administrative penalty and requiring certain actions of **Bountheung Noymany dba Boat Club Grocery in Tarrant County**; TCEQ ID No. RN100737493; for petroleum storage tank violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Rebecca M. Combs, Lena Roberts)

Approve the Default and Shutdown Order. BS/LS; all agree.

PUBLIC WATER SYSTEM ENFORCEMENT AGREED ORDERS

Item 64. **Docket No. 2008-1376-PWS-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Clarkson Energy Homes Inc. dba Sun Valley Mobile Home Park in Erath County**; RN101176915; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Christopher Keffer, Cari-Michel La Caille)

Approve the Agreed Order. BS/LS; all agree.

Item 65. **Docket No. 2007-0935-PWS-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Corinne Maib dba Coleto Water in Victoria County**; RN102683562; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Stephen Thompson, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 66. **Docket No. 2007-1360-PWS-E.** Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **T S Ranch & Retreat, Inc. in Parker County**; TCEQ

ID No. RN104810619; for public water supply violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Anna M. Cox, Lena Roberts)

Approve the Agreed Order. BS/LS; all agree.

Item 67. **Docket No. 2008-1238-PWS-E**. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Julie Ann Thames dba Primrose Mobile Home Park** in **Johnson County**; RN101228005; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Thomas Jecha, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 68. **Docket No. 2008-1644-PWS-E**. Consideration of an Agreed Order assessing administrative penalties against the **City of Hale Center in Hale County**; RN101383982; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Andrea Linson-Mgbeoduru, Cari-Michel La Caille)

Approve the Agreed Order. BS/LS; all agree.

Item 69. **Docket No. 2008-1297-PWS-E**. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **The Grove Water Supply Corporation in Coryell County**; RN101216620; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Yuliya Dunaway, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 70. **Docket No. 2008-1037-PWS-E**. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **Fort Gates Water Supply Corporation in Coryell County**; RN101216257; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Epifanio Villarreal, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

PUBLIC WATER SYSTEM ENFORCEMENT DEFAULT ORDER

Item 71. **Docket No. 2007-1826-PWS-E**. Consideration of a Default Order assessing administrative penalties and requiring certain actions of **Hank Cantu dba Hills of Texas Bulk Water in Burnet County**; TCEQ ID No. RN103108452; for public drinking water violations pursuant to Tex. Health & Safety Code ch. 341 and the rules of the Texas Commission on Environmental Quality. (Laurencia Fasoyiro, Lena Roberts)

Approve the Default Order. BS/LS; all agree.

WATER QUALITY ENFORCEMENT AGREED ORDERS

Item 72. **Docket No. 2008-1666-WQ-E**. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of **HCN MANAGEMENT, LLC** in **Coryell County**; RN105431985; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Samuel Short, Cari-Michel La Caille)

Approve the Agreed Order. BS/LS; all agree.

Item 73. **Docket No. 2008-1105-WQ-E**. Consideration of an Agreed Order assessing administrative penalties against **Silo Road Partners, Ltd.** in **Collin County**; RN105538649; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Lauren Smitherman, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 74. **Docket No. 2008-1419-WQ-E**. Consideration of an Agreed Order assessing administrative penalties against **Jeske Construction Co.** in **Dallas County**; RN101560324; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Samuel Short, Bryan Sinclair)

Approve the Agreed Order. BS/LS; all agree.

Item 75. **Docket No. 2007-1146-WQ-E**. Consideration of an Agreed Order assessing administrative penalties against **ICI Construction, Inc.** in **Smith County**; RN105171698; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Lena Roberts)

Approve the Agreed Order. BS/LS; all agree.

Item 76. **Docket No. 2008-1452-WQ-E**. Consideration of an Agreed Order assessing administrative penalties against **Toll Bros., Inc.** in **Travis County**; RN104981212 and RN104976857; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Jorge Ibarra, P.E., Cari-Michel La Caille)

Approve the Agreed Order. BS/LS; all agree.

WATER QUALITY ENFORCEMENT DEFAULT ORDER

Item 77. **Docket No. 2007-1682-WQ-E**. Consideration of a Default Order assessing administrative penalties and requiring certain actions of **Stoneridge Custom Homes, Inc.** in **Tarrant County**; TCEQ ID No. RN105348981; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Tex. Admin. Code ch. 60. (Gary K. Shiu, Lena Roberts)

Approve the Default Order. BS/LS; all agree.

STATE IMPLEMENTATION PLAN

Item 78. Docket No. 2007-1539-SIP. Consideration of the adoption of a revision to the State Implementation Plan (SIP) to address visibility impairment due to regional haze in Class I Federal areas. The adopted revision would implement Federal Clean Air Act requirements to make reasonable progress in reducing visibility impairment at Class I Federal areas, including Big Bend and Guadalupe Mountains National Parks, resulting from anthropogenic pollution. (Margaret Earnest, John Minter) (Project No. 2007-016-SIP-NR)

Approve the adoption of the proposed revision to the State Implementation Plan to address visibility impairment due to regional haze in Class I Federal areas as recommended by the Executive Director. BS/LS; all agree.

RULE MATTERS

Item 79. Docket No. 2008-1631-RUL. Consideration for publication of and hearing on, proposed amended section 101.1 of **30 TAC Chapter 101**, General Air Quality Rules; proposed amended sections 116.10, 116.12, and 116.150 of **30 TAC Chapter 116**, Control of Air Pollution by Permits for New Construction or Modification; and corresponding revisions to the state implementation plan. The proposed rulemaking would amend definitions in 30 TAC Chapter 101 to remove language regarding specific maintenance and nonattainment areas. Additionally, the proposed rulemaking would amend Chapter 116 to remove language indicating that the one-hour thresholds and offsets are not effective unless the U.S. Environmental Protection Agency (EPA) promulgates rules. The proposed rulemaking would also amend Chapter 116 to add a requirement for continued applicability of nonattainment New Source Review until the EPA approves its removal for areas attaining the ozone NAAQS. (Blake Stewart, Terry Salem) (Rule Project No. 2008-030-116-PR)

Remanded to the Executive Director. BS/LS; all agree.

Item 80. Docket No. 2008-1632-RUL. Consideration for the adoption of amendments to **30 TAC Chapter 334**, Underground and Aboveground Storage Tanks, Sections 334.71, 334.201, and 334.503; and **30 TAC Chapter 350**, Texas Risk Reduction Program, Sections 350.2, 350.4, 350.77, 350.91, and 350.92. The rulemaking would remove applicability of Chapter 350, Texas Risk Reduction Program, to the remediation of Leaking Petroleum Storage Tank (LPST) sites, and it would reinstate the applicability of Chapter 334. The proposed rules were published in the November 21, 2008 issue of the *Texas Register* (33 TexReg 9433). (Anton Rozsypal, Cullen McMorrow) (Rule Project No. 2009-003-350-PR)

Approve the adoption of the proposed amendments to 30 TAC Chapter 334 and 30 TAC Chapter 350 as recommended by the Executive Director. BS/LS; all agree.

Item 81. Docket No. 2008-1866-RUL. Consideration for the publication of, and hearing on, proposed amendments to **30 TAC Chapter 21**, Water Quality Fees, Section 21.3 and **30 TAC Chapter 290**, Public Drinking Water, Section 290.51. The proposed rulemaking would increase the Public Health Services fee, the Consolidated Water Quality fee, and the Water Use Assessment fee to ensure that there are sufficient funds to carry out the tasks required to protect water resources in the state. (Kathleen Ramirez, Margaret Ligarde) (Rule Project No. 2009-007-021-PR)

Approve the publication of and hearing on the proposed amendments to 30 TAC § 21.3 and 30 TAC § 290.51 as recommended by the Executive Director and modified by the Commission at the Agenda meeting. LS/BS; all agree.

PUBLIC COMMENT SESSION

Item 82. The Commission will receive comments from the public on any matters within the jurisdiction of the TCEQ, with the exception of pending permitting matters or other contested cases which are subject to the ex parte prohibition found in Texas Government Code §2001.061. In the interest of time, speakers will be limited to three minutes each, with the total time for public comment limited to one hour.

No action taken.

EXECUTIVE MEETING

Item 83. **Docket No. 2009-0001-EXE.** The Commission will conduct a closed meeting to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Commission's Executive Director and General Counsel, as permitted by Section 551.074 of the Texas Open Meetings Act, Chapter 551 of the Government Code. The Commission may also meet in open meeting to take action on this matter as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.

The commission did not meet in an executive meeting.

Item 84. **Docket No. 2009-0002-EXE.** The Commission will conduct a closed meeting to receive legal advice and will discuss pending or contemplated litigation, settlement offers, and/or the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of specific Commission employees, as permitted by Sections 551.071 and 551.074, the Open Meetings Act, codified as Chapter 551 of the Government Code. The Commission may also meet in open meeting to take action on legal or personnel matters considered in the closed meeting as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.

The commission did not meet in an executive meeting.

Item 85. **Docket No. 2009-0003-EXE.** The Commission will conduct a closed meeting to discuss their duties, roles, and responsibilities as Commissioners of the TCEQ pursuant to Section 551.074 of the Open Meetings Act, Codified as Chapter 551 of the Government Code. The Commission may also meet in open meeting to take action on this matter as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.

The commission did not meet in an executive meeting.

(PERSONS WITH DISABILITIES WHO PLAN TO ATTEND THE TCEQ AGENDA AND WHO MAY NEED AUXILIARY AIDS OR SERVICES SUCH AS INTERPRETERS FOR PERSONS WHO ARE DEAF OR HEARING IMPAIRED, READERS, LARGE PRINT, OR BRAILLE ARE REQUESTED TO CONTACT OFFICE OF THE CHIEF CLERK AT (512) 239-3300 AT LEAST TWO (2) WORK DAYS PRIOR TO THE

AGENDA, SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE. PERSONS WHO DESIRE THE ASSISTANCE OF AN INTERPRETER IN CONJUNCTION WITH THEIR ORAL PRESENTATION AT THIS TCEQ AGENDA ARE REQUESTED TO CONTACT THE OFFICE OF THE CHIEF CLERK AT (512) 239-3300 AT LEAST FIVE (5) WORK DAYS PRIOR TO THE AGENDA SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE.)
REGISTRATION FOR AGENDA STARTS AT 8:45 A.M. AND WILL CONTINUE UNTIL 9:30 A.M. PLEASE REGISTER BETWEEN THESE TIMES. LATE REGISTRATION COULD RESULT IN YOUR MISSING THE OPPORTUNITY TO COMMENT ON YOUR ITEM.

THE PUBLIC CAN VIEW LIVE AND ARCHIVED TCEQ MEETINGS ON THE INTERNET AT NO COST, AT: HTTP://WWW.TEXASADMIN.COM/cgi-bin/tnrcc.cgi

/s/ Anne Rowland
Assistant General Counsel,
Anne Rowland

03/06/2009
Date

Texas Commission on Environmental Quality (TCEQ)
Chief Engineer's Office
Tax Relief for Pollution Control Property Advisory Committee Meeting
February 15, 2012
10:02A.M. – 11:46P.M.
TCEQ, Austin Campus, Building E, Room 201S

Minutes

Opening Remarks

1. Call to order and recognition of committee members for the record.
   Mr. Bob Adair called the meeting to order at 10:02 a. m. with ten members present. Dr. Cyrus Reed arrived at 10:45 a.m. Mr. Mike Nasi and Mr. Greg Maxim did not attend.

2. Introduction of Mr. Lloyd Graham (new Committee member).
   Mr. Adair introduced Mr. Graham, superintendant of the La Porte Independent School District, who is the committee's newest member. Mr. Graham stated that he looks forward to being a part of the committee.

3. General comments from committee members and staff.
   No comments were received.

4. Public comments policy discussion.
   Mr. Adair re-stated the public comment policy. No action was taken.

Election of 2012 Chairperson of Advisory Committee (required by committee bylaws)

A motion was made to reelect Mr. Adair as committee chair. The motion was seconded and then approved without opposition.

Review Draft 2011 Annual Report of Advisory Committee (required by committee bylaws)

Committee members reviewed the draft 2011 Annual Report. It was pointed out that on page three of the report the listing for Mr. Leo Scherrer is the only one that contains a professional designation. A motion was made to remove the P. E. after Mr. Scherrer's name and accept the report as written. The motion was seconded and then approved unanimously.

EXHIBIT 21

Consider revisions to Application Form and Instructions

Mr. Adair presented two documents, Section 1 of Use Determination for Pollution Control Property Application and Section 1 Instructions for Use Determination for Pollution Control Property Application Form TCEQ-00611. There was general discussion on whether or not the question about ownership should be asked as an eligibility question in Section 1 of the application. A motion was made to have TCEQ staff prepare an amended application form and instructions for presentation at the next meeting. The motion was seconded and passed.

Consider TCEQ staff's request for advice (continued discussion from 11/18/11 Advisory Committee meeting)

Rule/regulation citation for property on the Equipment and Categories List (Tier I Table) installed as a Best Management Practice.

Mr. Tim Reidy, TCEQ Legal Staff, presented a proposal based on staff's previous proposal and a memo presented by Mr. Robert Castor during the November 18, 2011, meeting. A motion was made and seconded to adopt the proposal into agency guidance with minor grammatical and formatting changes. The motion passed.

Other

1. Old Business
   Mr. Don Lee requested an update from staff on the status of the pending hydrotreater and heat recovery steam generator (HRSG) applications.

   Mr. Minor Hibbs, TCEQ staff, explained that technical notice of deficiency letters were mailed to the hydrotreater applicants providing them with the opportunity to provide the same information that was requested from Valero. If no response is received by February 17, 2012, these applications will be considered to have been withdrawn by the applicants.

   Mr. Adair asked if staff knew the status of the attorney general's opinion request made by Senators Ellis and Davis. Mr. David Hodgins, Thompson +Horton, LLP, stated that the request had been withdrawn.

   Mr. Hibbs explained that staff is in the process of briefing agency management about potential options for completing the HRSG applications. The current status is the six appealed applications have not been placed on the commissioner's agenda, and the applications that are on hold are still on hold pending the outcome of the appeals.

2. New Business
   Dr. Reed asked if the agency had prepared an annual report on the Tax Relief Program. Mr. Chance Goodin, TCEQ staff, explained that a report on the 2010 calendar year has recently been placed on the agency Web page and that the 2011 report will be prepared later this year.

   Mr. Adair asked staff about an apparent conflict in the bylaws. The document contains two sections on voting. One allows voting by e-mail or by phone and the other does not. Members expressed concern that it may be possible to submit a vote for or against a motion before the motion was even made. Mr. Reidy agreed to review the bylaws and past meeting minutes to verify which proposed amendments to the bylaws have been adopted.

3. Future Meetings
   Mr. Adair will work towards scheduling the next meeting during the second quarter of 2012.

4. Public Comments
   Mr. John Kennedy, Texas Taxpayers and Research Association, provided comments regarding item four of the agenda: *consider revisions to Application Form and Instructions.*

Adjourn

A motion to adjourn was passed at 11:46 a. m.

Action Items

- Staff will present draft versions of the application and instructions at the next meeting.
- Staff will present the programs 2010 annual report at the next meeting.
- Staff will review past committee minutes to verify which if any proposed changes have been adopted into the bylaws.

Next Meeting Date

To be determined.

EXHIBIT C

Application Review Summary

Application Number: 11971
Company: Borger Energy Associates, LP
Facility: Blackhawk Station
County: Hutchinson
Tier: IV
Estimated Cost of Property: $13,906,514.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This facility has thermally efficient heat recovery steam generators (HRSGs). Use of the equipment will improve the thermal efficiency of the plant.

Tier IV Partial Percentage: 100%. Calculation based on NOx avoidance.

Rule Citation(s)

40 CFR 60.Subpart DA: Standards of Performance for New Stationary Sources. Standards of performance for Electric Utility Steam Generating Units for Which Construction is Commenced after September 18, 1978. This rule does not require the installation of this equipment.

Final Determination

A positive use determination was issued on 5/1/2008, as 100% pollution control for the Heat Recovery Steam Generators. The determination was appealed on 5/19/2008. The application was remanded to the executive director for further review on 6/29/2012, on 7/10/2012 a negative determination was issued stating that heat recovery steam generators are used solely for production and, therefore, are not eligible for a positive use determination.

Administrative Review

Administrative Review Chronology

Received Date: 03/31/2008
Date Application Was Declared Administratively Complete: 04/08/2008

Fee Information

Application Fee Paid: Yes

Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

Technical Review Start Date: 04/08/2008
Technical Review Completion Date: 04/30/2008
Determination Issued: 5/01/2008
Appeal Date: 5/16/2008
Remand Date: 6/29/2012
Technical Review Start Date: 7/02/2012
Technical Review Completion Date: 04/30/2008
Re-Determination Date: 7/09/2012

Ronald Hatlett 7/9/12
Project Reviewer Date

Work Leader 7/9/13
Work Leader Date