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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 JAN -7 AM 10: 08
CHIEF CLERKS OFFICE

January 6, 2009

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

Re: Appeal of the Executive Director's Use Determinations regarding Freeport Energy Center, L.P., TCEQ Use Determination No. 07-11994; TCEQ Docket No. 2008-0850-MIS-U.

To the Honorable Members of the Texas Commission on Environmental Quality:

Request: We respectfully request that the TCEQ reverse the decision made by the Executive Director and find a Negative Determination which would deny any exemption on the Heat Recovery Steam Generators (B-8) in Use Determination 07-11994. We concur with the Negative Determination made by the Executive Director for the Steam Turbine (B-10) in the same Use Determination. Since it was not appealed by the property owner within the allotted time frame, the determination on the steam turbine should not be open for discussion.

We oppose the Heat Recovery Steam Generator being determined, even partially, as a pollution control device for many different reasons.

1) **HRSG's themselves do not reduce pollution, the pollution control equipment hanging on or placed inside them do.**

2) **The pollution control equipment that does reduce pollution has previously been exempted under Use Determination 05-8894. To now find a positive determination for the entire HRSG as a pollution control device is effectively exempting that previously exempted equipment twice.**

3) **If the costs of the pollution control components that are exempted under Use Determination 05-8894 are subtracted from the total costs of the HRSG, the only parts left to exempt are the non-pollution control, production components of the HRSG which fails the determination flow chart.**

4) **No distinction was made between HRSG's that have duct burners, which dramatically increase the amount of NOx produced and HRSG's that do not have duct burners.**

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5) **All HRSG's that applied were granted a 100% positive determination regardless of whether the applicant applied for a 16% exemption or a 503% exemption.**

6) **The positive determination is based on a comparison of NOx reduction and increased thermal efficiency of the industry standard combined cycle power plant with out of date, simple cycle technology. This effectively expands the definition of pollution control device to include anything that improves energy efficiency.**

Justification

1) *HRSG's themselves do not reduce pollution, the pollution control equipment hanging on or placed inside them do.*

Gas fired, combined cycle power plants have been around for many years. We currently appraise a number of gas fired power plants that have HRSG's that are over 20 years old and still in operation today. These plants were built before the recent NOx, SO2 and CO2 air emission standards that we have today. They were built with HRSG's to be more thermally efficient and therefore more financially competitive and profitable. To say that modern, gas fired, combined cycle power plants are built with HRSG's to reduce pollution is simply not true.

These older power plants released a tremendous amount of NOx, SO2 and CO2 into the atmosphere every day even with the HRSG's attached to them. It wasn't until more recent and more stringent air emission standards were imposed that these companies went out and attached air scrubbers, low NOx burners and emission monitors to their HRSG's to begin reducing their pollution output. The HRSG's don't reduce the pollution, the pollution control equipment placed inside them does.

2) *The pollution control equipment that does reduce pollution has previously been exempted under Use Determination 05-8894. To now find a positive determination for the entire HRSG as a pollution control device is effectively exempting that previously exempted equipment twice.*

Freeport Energy Center applied for and received a Positive Use Determination for its Ammonia Vaporizers, Continuous Emissions Monitoring Systems (CEMS), Selective Catalytic and Noncatalytic Reduction Systems (SCR) and continuous emissions analyzers in 2005 under Use Determination 05-8894 provided as in Exhibit 1. The applicant failed to respond, list or demonstrate in any way that this equipment (05-8894) was actually removed or is not being applied for twice. That would seem to be an extremely simple demonstration to provide and one that would silence a number of our oppositions, but when challenged, the applicant still fails to provide any data.

Having no other information to go on, we believe that a positive determination on the HRSG's as a whole exempts the previously exempted pollution control equipment (05-8894) twice.

3) *If the costs of the pollution control components that are exempted under Use Determination 05-8894 are subtracted from the total costs of the HRSG, the only parts left to exempt are the non-pollution control, production components of the HRSG which fails the determination flow chart.*

If we are able to get past our opposition number 2 and take the applicant's assertions as facts, with no supporting data, we have now removed all components from the HRSG's that actually reduce pollution. What we are left with is the production equipment that is not capable of reducing pollution. This leftover equipment fails the TCEQ's own Determination Flow Chart Figure 30 TAC 17.15(a), provided as Exhibit 2 in both boxes 3 and 5 which result in box number 4 "Not eligible."

4) *No distinction was made between HRSG's that have duct burners, which dramatically increase the amount of NOx produced and HRSG's that do not have duct burners.*

Many combined cycle, gas fired power plants and cogeneration facilities have additional heating sources within the HRSG's called Duct Burners. These allow for more control of the temperature of the HRSG and therefore more reliability and control of the steam that is generated by the HRSG. As ambient, outdoor temperatures fluctuate throughout the year, they have an impact on the consistency of the temperature within the HRSG needed for steam generation. These duct burners allow a power plant to adjust and maintain constant steam generation throughout the year.

However, duct burners are gas fired burners that generate NOx, SO2 and CO2, many times, more pollutants than the gas turbine burners produce. This would make the HRSG a pollution generator; meaning a gas fired, combined cycle power plant with a HRSG with duct burners would produce <u>more</u> pollutants than a simple cycle gas turbine with no HRSG.

The Executive Director makes no distinction between HRSG's with duct burners and HRSG's without duct burners even though the quantity of pollutants generated are dramatically different. The Executive Director has evaluated the best case scenario, no duct burners, and applied it to all HRSG's. We don't believe that the Executive Director was given all of the information available regarding duct burners and the pollution generating capabilities of HRSG's and therefore cannot make a proper ruling applicable to all HRSG's.

5) *All HRSG's that applied were granted a 100% positive determination regardless of whether the applicant applied for a 16% exemption or a 503% exemption.*

Of the applications received by the TCEQ for Use Determination on HRSG's many of them were requesting less than 100% exemption based on the calculation used to determine the pollution reduction. Some of these included pollution control calculations from 13%, 22%, 35%, 61.5%, 165%, 226%, 299%, 398% to 504%. We understand the Executive Director's desire to have one standard determination for all similar HRSG's, but don't agree with it. The property owners know their plants better than the Executive Director or I do and, therefore, each application should be evaluated on its own, based on its own merits.

6) *The positive determination is based on a comparison of NOx reduction and increased thermal efficiency of the industry standard combined cycle power plant with out of date, simple cycle technology. This effectively expands the definition of pollution control device in include anything that improves energy efficiency.*

The applicant compares the NOx emission of the new power plant with NOx emissions from hypothetical, out of date technology. It is our belief that if this hypothetical, out of date technology were in place and in use today it would have to meet the same air emission standards that the current plant is under. This would imply that no NOx reduction would occur as the older technology would have to be

retrofitted with new pollution control devices to meet today's standards. The applicant is comparing apples and oranges to arrive at a desired result.

In considering thermal energy efficiency improvement, the Executive Director is opening a Pandora's Box as most new technology in Industrial properties is more energy efficient in some way and could thereby be considered a pollution control device.

- A new steam boiler that is more energy efficient and emits fewer pollutants than the old boiler that it replaces could be considered a pollution control device along with the entire Tier I pollution control equipment that is hanging off the unit.
- All of the heat exchangers used throughout the refineries and chemical plants in the State that use a waste heat source to warm a cooler product stream could be considered pollution control devices because they are more thermally efficient than generating the heat by burning natural gas. Heat exchangers are a closed loop system. No pollution or product is released.
- A new, energy efficient ethylene furnace that produces the same amount of product with less natural gas and produces less pollution because of its state of the art pollution control equipment than a hypothetical, out of date unit would be considered due to its increased thermal efficiency and NOx reduction even though it's a giant furnace.

These examples don't make sense to me the same way a steam boiler could get a positive determination because it uses a waste heat stream and natural gas burners to boil water and yet a similar boiler that uses only natural gas burners could not.

Conclusion

We hope that the Commission will consider our arguments and reverse the Executive Director's Positive Use Determination for the HRSG's. This equipment has never qualified for a full or even a partial exemption before and we feel that they don't today. We are certain that all of the equipment that truly reduces pollution at this site has already been exempted (05-8894). We just feel that this is a step above and beyond what Proposition 2 allows and what is being done in coal fired and nuclear power plants, refineries, chemical plants and all other industrial facilities across the State. Once we exempt a process unit as a whole because it has pollution control equipment attached to it, our approach to all process units will have to change and the exemptions will grow exponentially and undeservedly.

We have included as an Addendum a letter from the Texas Conference of Urban Counties expressing their shared concerns regarding the Determination on the HRSG's.

Thank you for your time. Should you have any further questions or require any additional information on this matter, please, do not hesitate to contact my office.

Sincerely,

Hugh L. Landrum, Jr.

Hugh L. Landrum, Jr., PE, RPA RTA
Hugh L. Landrum & Associates, Inc.

Exhibit 1

TCEQ Use Determination 05-8894

Exempted Pollution Control Equipment
Associated with the HRSG's

REFINERY

Ultra-low NOx burners installed in nine olefins furnaces (91H1-1 through 91H1-9) and process furnace 22H-1.

A positive use determination for 100% of ultra-low NOx burners on nine olefins furnaces and a process furnace.

04 8351 EQUISTAR CHEMICALS LP
I A EQUISTAR CHOCOLATE BAYOU $1,368,000.00
REFINERY

Continuous emission monitors, analyzers buildings, and predictive emissions monitors.

A positive use determination for 100% of the continuous emission monitors, analyzers buildings, and predictive emissions monitors.

05 8894 FREEPORT ENERGY CENTER LP
I A FREEPORT ENERGY CENTER LP $12,745,435.00
ELEC UTIL

1. Two Ammonia Vaporizers. 2. Boilers 91, 92, 93 & 94: ammonia injection skids, SCRs, stacks, air/fuel ratio controllers, and CEMs. 3. Ammonia vaporizer containment basin, deluge system, and leak detection system. 4. Waste water collection sump pumps and piping. 5. Oil/water separator. 6. Sanitary lift station. 7. Fuel gas chromatograph, calorimeter, gravitometer. 8. Gas scrubbers, distillate tank, and filter separator (4). 9. Sodium hypochlorite double-walled tank. 10. Boiler block area paving. 11. Transformer containment basins (4). 12. Caustic Acid Neutralization Constrainments (3). 13. Potable water piping and backflow preventor (2). 14. Caustic, acid, neutralization concrete containment (3).NOx continuous emission analyzers on large heaters and boilers. NOx continuous emission analyzers on
large heaters and boilers. 15. Dry low NOx combustor on gas-fired combustion turbine generator. 16.Inlet guide vanes on combustion turbine.

A positive use determination for 100% of the property items listed above with the exception of the double-walled sodium hypochlorite tank which is given a 50% determination.

04 8012 FREEPORT LNG DEVELOPMENT LP
I A FREEPORT LNG - QUINTANA FACILITY $174,812.00
CHEMICAL MANF

The following items: ground flare, flare stack monitor, hydrocarbon detection sensors, 12 boiler stack monitors, tank roofs/suspended decks, extensions to boiler exhaust stacks, vapor/liquid recovery - (BOG compressors (4), compressor suction drum, vapor return blower, tank top vapor

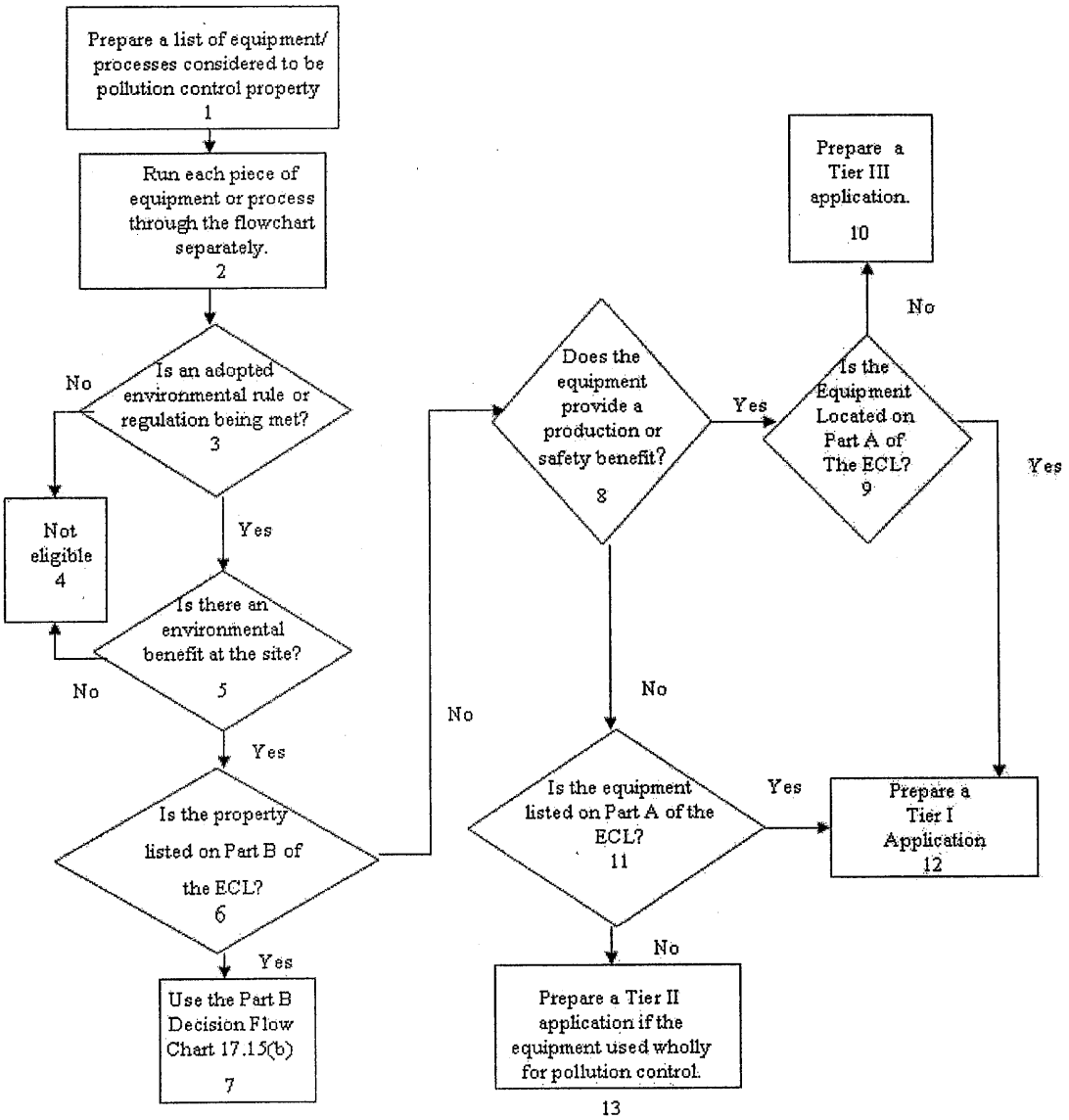
Exhibit 2

TCEQ Decision Flow Chart

Figure: 30 TAC 17.15(a)

Figure: 30 TAC §17.15(a) **Decision Flow Chart**

Applicants must use this flowchart for each piece of equipment or process. In order for a piece of equipment or process to be eligible for a positive use determination the item must generate 'yes' answers to the questions asked in boxes 3 and 5. ECL means the Equipment and Categories List adopted under Texas Tax Code, §11.31(g).



Boxes 2 through 5 are used to determine if the property is pollution control property. Boxes 6 through 13 are used to determine the percentage of the use determination.

Where:

- Prepare a list of all property that is considered to be pollution control property.
- Process each item on the list through the flow chart separately.
- Determine the specific state, local, or federal environmental regulation, rule or law that is being met or exceeded by the use of this property.
- Determine the environmental benefit that this property provides at the site where it is installed.
- Determine if the property is listed on Part B of the ECL
- Determine if the equipment is only partly used for pollution control. If it is used only partly, and is not listed on Part A of the Equipment and Categories List (ECL), then a Tier III application must be filed and the partial determination calculation detailed in §17.17 Partial Determinations must be used.
- If the equipment is listed in Part A on the ECL, determine the reference number for that item. Include all equipment for the project in a single list that is included with the application
- If the equipment is not in Part A on the list prepare a Tier II application.

Exhibit 3

Listing of All Tier IV Applications Submitted

Comparison of Exemption Requested and Exemption Granted

HB 3732 Tier IV Exemptions

Application	Name of Applicant	County, Location	Type of Equipment	Cost of Equip	Type of Calculation	Sought	TCEQ Determination if any	Representation
08-211914	Tenaska Gateway	Mt.Enterprise, Rusk	HSRG and Enahanced Steam Turbine	$48,040,000	Compared with Simple Cycle with SCR	25%	100% on HRSG, 0% on Turbine	Thomson
08-211915	Tenaska Frontier	Shiro, Grimes	HSRG and Enahanced Steam Turbine	$55,180,000	Compared with Simple Cycle with SCR	22%	100% on HRSG, 0% on Turbine	Thomson
08-211916	Florida Power and Light	Forney, Kaufman	HSRG and Enahanced Steam Turbine	$129,890,000	Output-based Emissions	100%	100% on HRSG, 0% on Turbine	Duff & Phelps
08-211917	Lamar Power Partners-FPL	Paris, Lamar	HSRG and Enahanced Steam Turbine	$69,950,000	Output-based Emissions	100%	100% on HRSG, 0% on Turbine	Duff & Phelps
08-211921	Rio Nogales	Sequin, Guadalupe	HSRG and Enahanced Steam Turbine	$55,820,000	Compared with Simple Cycle with SCR	22%	100% on HRSG, 0% on Turbine	Thomson
08-211926	Navasota Wharton	Colorado Bend, Wharton	HSRG and Enahanced Steam Turbine	$36,640,000	Output-based Emissions	100%	100% on HRSG, 0% on Turbine	Duff & Phelps
08-211927	Navasota Odessa	Odessa, Ector	HSRG and Enahanced Steam Turbine	$39,600,000	Output-based Emissions	100%	100% on HRSG, 0% on Turbine	Duff & Phelps
08-211942	Odessa-Ector Power Partners	Odessa, Ector	HSRG and Enahanced Steam Turbine	$119,550,000	Compared with Simple Cycle with SCR	13%	100% on HRSG, 0% on Turbine	Thomson
08-211943	Guadalupe Power	Marlon, Guadalupe	HSRG and Enahanced Steam Turbine	$112,500,000	Compared with Simple Cycle with SCR	14%	100% on HRSG, 0% on Turbine	Thomson
08-211964	GentexPower Corporation	Bastrop, Bastrop	HSRG and Enahanced Steam Turbine	$94,690,000	Output-based Emissions	100%	100% on HRSG, 0% on Turbine	Duff & Phelps
08-211965	Calpine Contstruction-Magic V	Edinburg, Hidalgo	HSRG and Enahanced Steam Turbine	$60,640,000	Output-based Emissions	100%	100% on HRSG, 0% on Turbine	Duff & Phelps
08-211966	Freestone Power-Fairfield	Fairfield, Freestone	HSRG and Enahanced Steam Turbine	$62,270,000	Output-based Emissions	100%	100% on HRSG, 0% on Turbine	Duff & Phelps
08-211967	Deer Park Energy Center	Deer Park, Harris	HSRG and Enahanced Steam Turbine	$72,900,000	Output-based Emissions	100%	100% on HRSG, 0% on Turbine	Duff & Phelps
08-211968	Corpus Christi Cogeneratn	Corpus Christi, Nueces	HSRG and Enahanced Steam Turbine	$45,970,000	Output-based Emissions	71%	100% on HRSG, 0% on Turbine	
08-211969	Brazos Valley Energy	Richmond, Fort Bend	HSRG and Enahanced Steam Turbine	$56,910,000	Output-based Emissions	100%	100% on HRSG, 0% on Turbine	Duff & Phelps
08-211970	Baytown Energy	Baytown, Chambers	HSRG and Enahanced Steam Turbine	$58,410,000	Output-based Emissions	100%	100% on HRSG, 0% on Turbine	Duff & Phelps
08-211971	Borger Energy Blackhawk st	Borger, Hutchinson	HSRG and Enahanced Steam Turbine	$13,900,000	Output-based Emissions	100%	100% on HRSG, 0% on Turbine	Duff & Phelps
08-211972	GS Electric Generation Coop	Mustanq, Denver City, Yoakum	HSRG and Enahanced Steam Turbine	$53,360,000	Output-based Emissions	100%	100% on HRSG, 0% on Turbine	Duff & Phelps
08-211994	Freeport Energy Center	Freeport, Brazoria	HSRG and Enahanced Steam Turbine	$41,300,000	% Reduction of Emissions compared with Old Plant	100%	100% on HRSG, 0% on Turbine	Dow
08-212000	Frontera Generation	Mission, Hidalgo	HSRG and Enahanced Steam Turbine	$51,740,000	Compared with Simple Cycle with SCR	16%	100% on HRSG, 0% on Turbine	Thomson
08-212001	Bastrop Energy	Cedar Creek, Bastrop	HSRG and Enahanced Steam Turbine	$36,600,000	Compared with Simple Cycle with SCR	22%	100% on HRSG, 0% on Turbine	Thomson
08-212003	NRG Texas-Cedar Bayou IV	Baytown,Champers	HSRG and Enahanced Steam Turbine	$95,060,000	Output-based Emissions	100%	100% on HRSG, 0% on Turbine	Duff & Phelps
08-212004	NRG Texas-Limestone	Jewett, Limestone	HSRG (Economizers within boiler)	$9,340,000	Output-based Emissions	100%	No Decision	Duff & Phelps
08-212005	NRG Wharton	Houston, Harris	HSRG	$12,840,000	Output-based Emissions	100%	100% on HRSG, 0% on Turbine	Duff & Phelps
08-212015	Pasadena Cogeneration	Pasadena, Harris	HSRG and Enahanced Steam Turbine	$36,700,000	Output-based Emissions	100%	100% on HRSG, 0% on Turbine	Duff & Phelps
08-212016	Channel Energy	Pasadena, Harris	HSRG and Enahanced Steam Turbine	$54,210,000	Output-based Emissions	100%	100% on HRSG, 0% on Turbine	Duff & Phelps
08-212202	Wise Electric Power	Poolville, Wise	HSRG	$46,000,000	Efficiency-Based Output	61.2%	No Decision	Cummings
08-212203	Ennis Power Plant	Ennis, Ellis	HSRG and Enahanced Steam Turbine	$22,020,000	Efficiency-Based Output	61.2%	No Decision	Cummings
08-212210	Topaz Power	Corpus Christi, Nueces	HSRG and Enahanced Steam Turbine	$120,890,000	Output-based Emissions	100%	100% on HRSG, 0% on Turbine	Duff & Phelps
08-212211	Topaz Power	Corpus Christi, Nueces	HSRG and Enahanced Steam Turbine	$121,100,000	Output-based Emissions	100%	No Decision	Duff & Phelps
08-212268	Wolf Hollow	Granbury, Hood	HSRG	$35,000,000	Efficiency-Based Output	61.2%	No Decision	Cummings
08-212269	Gregory Power Partners	Gregory, San Patricio	HSRG	$35,100,000	Efficiency-Based Output	61.2%	No Decision	Cummings
08-212270	Sabine Cogeneration Plant	Orange, Orange	HSRG	$34,000,000	Efficiency-Based Output	61.2%	No Decision	Cummings
08-212271	Midlothian Energy	Venus, Ellis	HSRG and Enahanced Steam Turbine	$41,830,000	Efficiency-Based Output	35%	No Decision	
08-212272	Hays Energy	San Marcos, Hays	HSRG and Enahanced Steam Turbine	$44,150,000	Efficiency-Based Output	35%	No Decision	
08-212696	EN Services	Marshall, Harrison	HSRG and Enahanced Steam Turbine					
				$2,024,100,000				

Addendum

Texas Conference of Urban Counties

Letter of Opposition

TEXAS Conference of
Urban Counties

Chairman
Judge
Mike Bradford
Midland County

Chair Elect
Commissioner
Mike Cantrell
Dallas County

Immediate Past Chair
Judge
Glen Whitley
Tarrant County

Vice-Chairmen
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Bexar County
Comm. Sylvia Garcia
Harris County
Comm. Andy Meyers
Fort Bend County
Comm. Jay Millikin
Comal County
Judge J.D. Salinas
Hidalgo County

Executive Director
Donald Lee

Member Counties
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Brazoria ~ Brazos
Cameron ~ Chambers
Collin ~ Comal
Dallas ~ Denton
El Paso ~ Ellis
Fort Bend ~ Galveston
Grayson ~ Gregg
Guadalupe ~ Harris
Hays ~ Hidalgo
Hunt ~ Jefferson
Johnson ~ Kaufman
Lubbock ~ McLennan
Midland ~ Nueces
Randall ~ Rockwall
San Patricio ~ Tarrant
Travis ~ Williamson
Wise

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January 5, 2009

Commmissioner Buddy Garcia
Chairman, Texas Commission on Environmental Quality
MC-100
P.O. Box 13087
Austin, Texas 78711-3087
Hand Delivered

Re: **Opposition to the Proposed Pollution Control Tax Exemption Determinations on HRSG Units by TCEQ (Docket Nos. 2008-0850-MIS-U; 2008-0849-MIS-U; and others)**

Dear Chairman Garcia:

The Texas Conference of Urban Counties respectfully requests that the TCEQ reject the staff proposal to make a pollution control use determination of 61% for Heat Recovery Steam Generators (HRSG).

The analysis provided in the Executive Director's brief does not support the exemption of the value of a HRSG as a pollution control device. The method proposed is to subtract the "thermal efficiency increase" from 100% to arrive at a 61% determination on the value of the pollution control property.

This new method is makes no more sense than the methodologies found in the original applications. Nothing in the brief directly ties energy efficiency to the production value of the purported pollution control property. Without such a link, simply subtracting out the efficiency increase and assuming the remainder is the proper determination amount produces nonsensical results:

- A piece of equipment that increases energy efficiency by 39% receives a 61% partial determination as pollution control property.
- A piece of equipment that increases energy efficiency by 100% (or more) qualifies for nothing.
- A piece of equipment that provides no energy efficiency increase would qualify for a total exemption.

There may well be a simple way to correctly calculate the productive value and pollution control value of a HRSG, but clearly this calculation is not that way. The Urban Counties are open to any discussion to assist the TCEQ in finding a resolution to this issue, but there has yet to be analysis provided that supports an exemption determination.

It appears that the TCEQ Executive Director does not consider HRSGs to be entirely pollution control equipment. However, the fact that the TCEQ previously granted 100% determinations based on flawed calculations makes it imperative that the TCEQ carefully consider the consequences of

the latest proposal. In the absence of a better alternative, the TCEQ should take advantage of the structure it already has to determine partial exemptions. The TCEQ should use the Tier III process, which uses procedures that are long established and widely accepted in determining partial use exemptions.

The TCEQ should also consider using the "productive value test" suggested by Wayne Frazell of Pritchard and Abbott during the stake holder meetings. In order to determine if a piece of equipment has full or partial productive value, just determine the impact on production of its removal. For example, if a catalytic converter is removed from an engine, the engine continues to produce the same horsepower. In this case, if the HRSG is removed, the steam driven generator simply does not function. This would seem to be a clear indication that a HRSG is used to produce a product (steam) that is sold or used in production and as such, is not pollution control property.

As competitors in the market, power generation companies have the right and the obligation to cut their costs and increase their production through the use of new and innovative equipment that is more practical and efficient. However, the people of Texas and the state legislature never intended for the Prop. 2 program to become a windfall tax break for businesses that install more efficient modern equipment that incidentally reduces pollution, but whose specific installation is not required by federal, state, or local law.

It is useful to recall that during the rulemaking to develop the Tier IV process, the Attorney General and several of the legislative sponsors of HB 3732 made it clear that the list of equipment contained in the bill is not, and was not intended to be, an expansion of the Prop. 2 Program. The Urban Counties reiterates its stance at the time that the passage of HB 3732 does not require TCEQ to grant any exemptions for Part B property nor does it change the standards for making exemption determinations.

Thank you for considering our concerns and we hope that the TCEQ will take steps to ensure that the Prop 2 process continues to be administered carefully in order to avoid creating a substantial shift in the property tax base to the detriment of residential taxpayers.

Sincerely,

Donald Lee
Executive Director

cc:
Fort Bend County Appraisal District
Brazoria County Appraisal District