

FULBRIGHT & JAWORSKI L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP

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June 12, 2009

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

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

Re: Use Determination Application 12969
Mont Belvieu North Storage
Appeal of Negative Use Determination

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 JUN 15 PM 3:23
CHIEF CLERKS OFFICE

Dear Ms. Castanuela:

We represent Mont Belvieu Caverns LLC, the applicant for the above-referenced Use Determination Application. Our client is in receipt of the May 22, 2009 letter (a copy of which is attached as **Exhibit A**), in which the reviewer issued "a negative determination for the other items listed as part of the Brine Storage Pond: the brine transfer pumps; the fire and safety equipment; the brine pond piping; the electrical substation; the instrumentation and monitoring equipment that is not part of the leak detection and collection system; the water supply and treating; the bring pond construction; the land and pipeline right of way; the earthwork and site grading; and the soft costs."

Pursuant to 30 T.A.C. § 17.25(a)(2)(A), Mont Belvieu Caverns LLC files this appeal of the Executive Director's negative use determination. The information required under 30 T.A.C. § 17.25(b) is as follows:

- (1) provide the name, address, and daytime telephone number of the person who files the appeal:**

The undersigned and others are filing this appeal on behalf of Mont Belvieu Caverns LLC. All correspondence for this appeal should be sent to the following:

LaDonna Castanuela, Chief Clerk
Texas Commission on Environmental Quality
June 12, 2009
Page 2

Edward Kliewer
Fulbright & Jaworski L.L.P.
300 Convent Street, Suite 2200
San Antonio TX 78205-3792
Telephone: (210) 270 7144

- (2) give the name and address of the entity to which the use determination was issued;**

Mont Belvieu Caverns LLC
P. O. Box 4018
Houston, Texas 77210-4018

- (3) provide the use determination application number for the application for which the use determination was issued;**

Use Determination Application 12969

- (4) request commission consideration of the use determination; and**

This is a request to the Commission for consideration of the use determination.

- (5) explain the basis for the appeal.**

The request for the Commission's consideration of the use determination is a result of the failure of the Executive Director to correctly interpret the regulations relating to the category S-20, as it pertains to the qualification of brine ponds for Tier 1 pollution control exemption.

Very truly yours,



Jay M. Chadda

Attachment

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

May 22, 2009

MONT BELVIEU CAVERNS LLC
AL NOOR
PO BOX 4018
HOUSTON, TX 77210 4018

This letter is to inform you that on May 22, 2009, the technical review of Use Determination Application 12969 was completed. This application is for:

MONT BELVIEU CAVERNS LLC
MONT BELVIEU NORTH STORAGE
1027 FM 1942
MONT BELVIEU, TX 77580

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 by April 30 of the appropriate tax year.

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) 239-6348.

Sincerely,

A handwritten signature in cursive script that reads "D.C. Schanbacher".

David C. Schanbacher, P. E.
Chief Engineer

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

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 12969, filed by:

MONT BELVIEU CAVERNS LLC
MONT BELVIEU NORTH STORAGE
1027 FM 1942
MONT BELVIEU TX 77580

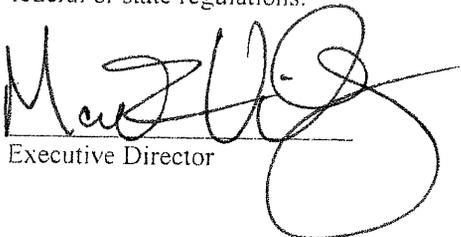
The pollution control property/project listed in the Use Determination Application is:

North Storage Project: one four million barrel High Density Polyethylene (HDPE) double-lined brine disposal pond, instrumentation, pond piping, electrical substation, and associated equipment. The current scope of the project includes the HDPE double-lined pond, a leak detection and collection system, and a 35ft X 70ft secondary containment concrete sump pit with transfer pumps, 3,500ft of 30" piping, and related instrumentation. Property listing provided on March 26: HDPE Liner, Fire & Safety Equipment, Brine Pond Piping, Electric Substation, Instrumentation & Monitoring Equipment, Water Supply & Treating, Brine Pond Construction, Land & Pipeline Right of Way, Earthwork & Site Grading, and Soft Cost (permits, Legal, travel, inspection, etc.).

The outcome of the review is:

A positive use determination for the High Density Polyethylene double liner, the leak detection and collection system, including the associated instrumentation and monitoring system, and the 35ft x 70ft concrete containment sump. A negative determination for the other items listed as part of the Brine Storage Pond: the brine transfer pumps; the fire and safety equipment; the brine pond piping; the electrical substation; the instrumentation and monitoring equipment that is not part of the leak detection and collection system; the water supply and treating; the brine pond construction; the land and pipeline right of way; the earthwork and site grading; and the soft costs.

This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.


Executive Director

5-22-09
Date