

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



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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 29, 2009

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: MONT BELVIEU NORTH STORAGE
TCEQ DOCKET NO. 2009-0930-MIS-U**

Dear Ms. Castañuela:

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Garrett Arthur", written over a horizontal line.

Garrett Arthur, Attorney
Assistant Public Interest Counsel

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 • P.O. BOX 13087 • AUSTIN, TEXAS 78711-3087 • 512-239-6363

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TCEQ DOCKET NO. 2009-0930-MIS-U

APPEAL OF EXECUTIVE DIRECTOR'S	§	BEFORE THE
USE DETERMINATION REGARDING	§	
MONT BELVIEU NORTH STORAGE	§	TEXAS COMMISSION ON
USE DETERMINATION APPLICATION	§	
NO. 12969	§	ENVIRONMENTAL QUALITY

**OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO APPEAL OF USE DETERMINATION**

To the members of the Texas Commission on Environmental Quality:

The Office of the Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or the "Commission") files this response to the appeal of the Executive Director's (ED) use determination regarding Mont Belvieu North Storage ("Mont Belvieu").

I. Introduction

In February 2009, Mont Belvieu submitted to TCEQ a Tier I use determination application in which Mont Belvieu sought a use determination for its brine storage pond facility in Chambers County. On May 22, 2009, the ED issued his use determination. The ED made a positive determination for the high density polyethylene double liner, the leak detection and collection system (including the associated instrumentation and monitoring system), and the 35 feet by 70 feet concrete containment sump. A negative determination was made for the following brine storage pond items: brine transfer pumps; fire and safety equipment; brine pond piping; electrical substation; instrumentation and monitoring equipment not part of the leak detection and collection system; water supply and treating; brine pond construction; land and

pipeline right of way; earthwork and site grading; and soft costs. On June 15, 2009, the TCEQ received Mont Belvieu's appeal of the ED's determination.

For the reasons stated herein, OPIC recommends that the appeal by Mont Belvieu be denied.

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.

To obtain a positive use determination under 30 TAC § 17.4, 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. In § 17.14, the Equipment and Categories List (ECL) catalogs property that the ED has determined is used either wholly or partly for pollution control purposes. Section 17.15(a) provides a Decision Flow Chart which is used for each item of property submitted in a use determination application to determine whether the particular item will qualify as pollution control property. Under § 17.25, an applicant has 20 days to appeal a use determination issued by the ED.

III. Analysis

As stated previously, the ED's use determination was issued May 22, and Mont Belvieu's appeal was received June 15. Using these dates, the appeal is timely under § 17.25.

Mont Belvieu's appeal states that the ED has failed to correctly interpret the regulations relating to category S-20 of the ECL, as it pertains to the qualification of brine ponds for Tier I pollution control exemption.

This application is for the construction of a brine storage pond, and S-20 is listed as the ECL number. The ED's technical review document states that category S-20 covers disposal ponds, but it does not cover brine storage ponds. The ED further states that storage ponds are considered to be production property and are not eligible for a positive use determination.

Mont Belvieu's facility stores brine which is used to displace hydrocarbons from an underground hydrocarbon storage facility. The brine at this facility is used to move hydrocarbons into and out of a salt cavern, and the subject equipment primarily serves this purpose. However, for three of the items associated with the brine storage pond, the ED was able to make a positive determination. The remaining items do not provide an environmental benefit at the site and are therefore ineligible for a positive determination. For the items which received a negative determination, OPIC cannot discern any environmental benefit provided by these items and must agree with the ED's characterization of the items as production equipment. Without providing an environmental benefit at the site, the equipment on appeal cannot qualify for a positive determination under 30 TAC § 17.15.

Further support for the ED's determination in this matter is provided by Commission precedent. In 2008, Mont Belvieu applied to the TCEQ for a use determination concerning the same brine storage pond.¹ The ED made a negative determination, and Mont Belvieu appealed. At the Commission's December 10, 2008 Agenda, the Commission unanimously decided to deny Mont Belvieu's appeal.² The current appeal involves the same facility and the same equipment. For the current application, Mont Belvieu provided sufficient information regarding the liner, the leak detection and collection system, and the containment sump to qualify those three items for a positive determination. Otherwise, Mont Belvieu's previous and current applications and the resulting ED determinations are essentially identical. OPIC finds no reason for the Commission to depart from the precedent established by the Commission's 2008 decision.

IV. Conclusion

Based on our review of the appeal, the Chief Clerk's files, and the application, OPIC concurs with the ED's use determination for the latest Mont Belvieu application. OPIC finds that the ED correctly applied the relevant law, and for the items being appealed, the law dictates the negative use determination made by the ED. Further, this Commission has previously considered an appeal concerning the same equipment at the same Mont Belvieu facility and upheld the ED's negative use determination in that instance. Therefore, OPIC respectfully recommends the Commission deny Mont Belvieu's appeal.

¹ TCEQ Docket No. 2008-0940-MIS-U; Use Determination Application No. 07-11881.

² See TCEQ Order concerning the Appeal filed by Mont Belvieu Cavers, LLC with regard to the Executive Director's Negative Use Determination for application No. 07-11881; TCEQ Docket No. 2008-0940-MIS-U (Attached as Exhibit A).

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By

A handwritten signature in cursive script, appearing to read "Garrett Arthur", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2009, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties listed below via hand delivery, facsimile transmission, electronic mail, inter-agency mail, or by deposit in the U.S. Mail.

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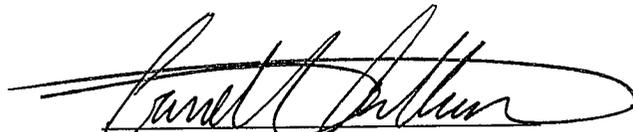
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Garrett Arthur

Exhibit A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER concerning the Appeal filed by Mont Belvieu Caverns, LLC with regard to the Executive Director's Negative Use Determination for application No. 07-11881; TCEQ Docket No. 2008-0940-MIS-U.

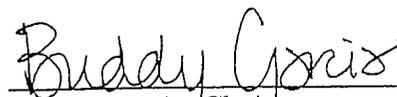
On December, 10, 2008, the Texas Commission on Environmental Quality (Commission) considered the appeal filed by Mont Belvieu Caverns, LLC (Appellant) with regard to the Executive Director's Negative Use Determination for the application assigned No. 07-11881. The Commission also considered the Executive Director's Response to the Appeal, the Office of Public Interest Counsel's Response to the Appeal, the Appellant's Reply to the Responses, and oral arguments made by the parties. The appeal was evaluated under applicable statutes and Commission rules, including Texas Tax Code § 11.31 and 30 Texas Administrative Code Chapter 17.

After considering the written filings and arguments made by the Appellant, the Executive Director, and the Office of Public Interest Counsel, the Commission determined to deny the appeal and affirm the Executive Director's Negative Use Determination having concluded that the Executive Director's Determination was in accordance with the applicable statutes and rules.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that the Appeal is hereby DENIED and the Executive Director's Negative Use Determination on the Mont Belvieu Caverns, LLP's application assigned No. 07-11881 is AFFIRMED.

Issue date: DEC 12 2008

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY


Buddy Garcia, Chairman