

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*



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

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

July 12, 2011

Melissa Chao, Acting Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk (MC-105)  
P.O. Box 13087  
Austin, Texas 78711-3087

**RE: WILLIAMS FIELD SERVICES - GULF COAST COMPANY  
TCEQ DOCKET NO. 2011-0996-MIS-U**

Dear Ms. Chao:

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 black ink, appearing to read "Garrett Arthur".

Garrett Arthur, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

**DOCKET NO. 2011-0996-MIS-U**

<b>WILLIAMS FIELD SERVICES-</b>	<b>§</b>	<b>BEFORE THE</b>
<b>GULF COAST COMPANY</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>USE DETERMINATION</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
<b>APPLICATION NO. 14534</b>	<b>§</b>	

**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 Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this response to the appeal of the Executive Director's (ED) negative use determination regarding Williams Field Services-Gulf Coast Company ("Appellant").

**I. Introduction**

On April 26, 2010, TCEQ received a use determination application for a natural gas cleaning and waste removal system, an amine processing system, and a dehydration system at the Appellant's Markham Gas Treating Facility in Matagorda County. The ED issued a negative determination dated May 16, 2011. On June 20, 2011, an appeal of the ED's negative determination was filed on behalf of Williams Field Services-Gulf Coast Company.

For the reasons stated herein, OPIC recommends the appeal be denied.

**II. Applicable Law**

Texas Tax Code § 11.31(a) 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. Section 11.31(a) further states that a person is not entitled to an exemption from taxation solely on the basis that the person manufactures or produces a product or provides a service that prevents, monitors, controls, or reduces air, water, or land pollution.

The 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, effective December 13, 2010. This application was declared administratively complete prior to those amendments. Therefore, the Chapter 17 requirements which existed prior to December 13, 2010 are applicable to this application.

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.

Under 30 TAC § 17.6, property is not entitled to an exemption from taxation solely on the basis that the property is used to manufacture or produce a product or provide a service that prevents, monitors, controls, or reduces air, water, or land pollution.

Under § 17.25(b), an appeal must be filed within 20 days after the receipt of the ED's determination letter, and a person is presumed to have been notified on the third regular business day after the date the notice of the ED's action is mailed. Section

17.25(b) further states that if an appeal is not filed within the time period specified, the ED's use determination is final. Section 17.25(b)(5) requires the appellant to explain the basis for the appeal.

### **III. Analysis**

The ED's use determination is dated May 16, 2011, but according to ED staff, the use determination was not mailed until May 23, 2011. Using May 23, 2011 as the date of ED action, the appeal deadline was June 15, 2011. *See* 30 TAC § 17.25(b). The TCEQ Revenue Section received the appeal on June 15, 2011, and the TCEQ Chief Clerk received the appeal on June 20, 2011. Though § 17.25(b) requires filing with the TCEQ Chief Clerk, the appeal was filed on the deadline, albeit with a different part of the TCEQ. OPIC will therefore consider this a timely filed appeal.

According to the application, the property at issue meets the requirements of 30 TAC § 115.121(c), § 115.122(c), and § 106.492. Section 106.492 is the permit by rule for smokeless gas flares. Sections 115.121(c) and 115.122(c) concern emission specifications and requirements for vent gas control in Matagorda County. Appellant also states in the application that the environmental benefit provided by the property is removal of VOC and other waste products which would otherwise be emitted to the atmosphere.

In his use determination letter, the ED states the negative determination is issued in accordance with 30 TAC § 17.4 and § 17.6. The letter further states that Appellant's equipment is used to convert raw natural gas into marketable gas products, and production equipment is not eligible for a positive use determination.

In the appeal, Appellant states that the property is used in the separation and removal of VOC, such as hydrogen sulfide, and other wastes, such as carbon dioxide. Appellant further states that the property segregates and captures the wastes for disposal in the facility's utility flare. Appellant asserts that because these wastes are removed to reduce the threat of contamination to air or water by inadvertent release, the subject property is not performing a production function. Finally, Appellant notes that the facility does not recover carbon dioxide or elemental sulfur as marketable byproducts from the subject property.

The ED has determined that the property at issue is used to convert raw natural gas into marketable gas products. After reviewing the available documents, OPIC supports the ED's negative use determination. OPIC finds the subject property is used primarily to produce various saleable gas products, and the removal of air contaminants such as VOC, hydrogen sulfide, and carbon dioxide is a necessary step in the production process. While Appellant has provided some explanation of the basis for the appeal, the explanation is not sufficient to overcome the ED's finding that the subject property is not entitled to a tax exemption.

OPIC also notes the Commission has previously determined that removal of hydrogen sulfide from natural gas does not qualify as pollution control. *See* XTO Energy, TCEQ Docket No. 2005-1008-AIR-U, Order issued Oct. 7, 2005. XTO Energy sought and received a 100% positive use determination for property used to remove hydrogen sulfide and sulfur dioxide from natural gas. The Freestone County Appraisal District appealed the ED's determination. The Commission disagreed with the ED's positive use determination and remanded the matter for a new determination. *Id.*

OPIC finds the current appeal presents a similar question to the Commission, and the XTO Energy case provides guiding precedent for the Commission's decision.

#### **IV. Conclusion**

Appellant has failed to show that the property at issue is not production equipment. The appeal does not provide an adequate basis for reversing the ED's negative use determination. Further, prior Commission precedent indicates the subject property is not eligible for a positive use determination. OPIC respectfully recommends the Commission deny this appeal and affirm the ED's negative determination.

Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By   
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## CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2011, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via hand delivery, facsimile transmission, electronic mail, inter-agency mail, or by deposit in the U.S. Mail.

  
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Garrett Arthur

**MAILING LIST**  
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**TCEQ DOCKET NO. 2011-0996-MIS-U**

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