

Chief Clerk
TCEQ Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
ATTN: Docket Clerk

July 20, 2011

Re: Williams Field Services – Gulf Coast Company
TCEQ Docket No. 2011-0996-MIS-U; Use Determination No. 14534

Appellant's Reply Brief to "*Executive Director's Response to Williams Field Services – Gulf Coast Company's Appeal of the Executive Director's Negative Use Determination*"

Dear Ms. Chao,

Enclosed for filing, please find the Appellant's Reply Brief to "*Executive Director's Response to Williams Field Services – Gulf Coast Company's Appeal of the Executive Director's Negative Use Determination*."

Per the correspondence dated June 24, 2011, from Les Trobman, General Counsel, the appellant may file a reply brief to the response brief on or before 5:00 pm on Thursday, July 21, 2011. Please do not hesitate to contact me with questions related to this response at (512) 671-5580.

Sincerely,



Gregory Maxim
Director
Property Tax

cc: See attached mailing list.

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
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APPEAL OF THE EXECUTIVE DIRECTOR'S
NEGATIVE USE DETERMINATION ISSUED TO
WILLIAMS FIELD SERVICES – GULF COAST
COMPANY USE DETERMINATION
NO. 14534

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL
QUALITY
CHIEF CLERKS OFFICE

APPELLANT'S REPLY BRIEF TO THE EXECUTIVE DIRECTOR'S RESPONSE TO WILLIAMS FIELD SERVICES – GULF COAST COMPANY'S APPEAL OF THE EXECUTIVE DIRECTOR'S NEGATIVE USE DETERMINATION

Williams Field Services – Gulf Coast Company (“Williams” or “Appellant”) files this reply brief to the Executive Director’s Response to the Appellant’s Appeal of the Executive Director’s Negative Use Determination. The Negative Use Determination was issued for the Appellant’s raw natural gas cleaning and waste removal system, amine processing system, and dehydration system at the Markham Gas Treating Facility (the “Facility”) in Markham, Matagorda County.

RESPONSES TO EXECUTIVE DIRECTOR’S LEGAL ANALYSIS

Executive Director’s Brief Issue #1

“The Executive Director’s negative use determination should be affirmed because the processing system is production equipment.”

Reply to Issue #1

Per 30 Texas Administrative Code (“TAC”) §17.4, effective at the time of Use Determination Application No. 14534 filing, *“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 on the United States, Texas, or a political subdivision of Texas, for the prevention, monitoring, control, or reduction of air, water, or land pollution.”* [emphasis added]

Per the Tier III application, dated April 23, 2010 (the “Application”), the subject pollution control property (“PCP”) was described as having both an inherent pollution control function in addition to a production function. A Tier III application filing is required when the subject pollution control property is *“used partly for pollution control and is not listed on the Equipment & Categories List (“ECL”). Tier III properties offer environmental benefits and improvements to production, safety, or other processes.”*¹

¹ Texas Regulatory Guidance, RG-461, Property-Tax Exemptions for Pollution Control Property, effective September 1, 2009 (“RG-461 Guidance Document”).

The initial filing for the subject PCP was made on December 15, 2009 in a Tier I Use Determination Application. As requested by the Executive Director in the Notice of Deficiency ("NOD") dated February 9, 2010, the Appellant filed a Tier III Use Determination Application for the PCP on April 28, 2010. The Executive Director's Response Brief to the Williams Use Determination Appeal affirms that this request was made; however, it also states that the Appellant was asked to "provide an explanation of how the Processing System (PCP) is pollution control equipment and not production equipment." [emphasis added] By the nature and purpose of a Tier III, as described above, the applicant acknowledges that the subject PCP is neither fully pollution control nor fully production equipment and should not be required to provide such an explanation as requested by the Executive Director.

Through the recommendation by the Texas Commission on Environmental Quality ("TCEQ") to re-file under a Tier III Application process, a tacit recognition of the dual functionality of the subject PCP existed and that the appropriate tax exempt portion of the subject PCP would be derived from the Cost Analysis Procedure ("CAP") model, in force at the time of application filing. The Appellant did not file an application for a 100% use determination as the response brief(s) imply. Rather, the Appellant utilized the CAP model which yielded a 100% use determination percentage.

The Appellant has met the "wholly or partly" requirement enumerated in 30 TAC §17.4 and has acknowledged the PCP as partial pollution control property by filing a Tier III application. The Appellant's satisfaction of the "meet or exceed" requirement, related to the applicable environmental laws, rules, and regulations, enumerated in 30 TAC §17.4 is discussed in further detail in Issue #2.

Finally, 30 TAC §17.6 describe property that is not eligible for a use determination as follows:

- (1) *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;*
- (2) *Property that is used for residential purposes . . . ;*
- (3) *Motor vehicles; and*
- (4) *Property that was subject to a tax abatement agreement executed before January 1, 1994 [emphasis added]*

The subject PCP is not any of the ineligible property defined above. As such, 30 TAC §17.6 does not apply.

Executive Director's Brief Issue #2

"The Executive Director's negative use determination should be affirmed because the Processing System was not installed to "meet or exceed rules and 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."

Reply to Issue #2

On December 15, 2009 a Tier I use determination application, Application No. 13951, was filed for the subject PCP. A Notice of Deficiency ("NOD") on the application on February 9, 2010. The Executive Director requested, among other things, that the applicant re-file the application as a Tier III application (the "Application"). In response to this request, on April 28, 2010, a Tier III Application, as described above, was filed for the subject PCP. On June 3, 2010 this Application was deemed administratively complete. On January 25, 2011 this Application was declared technically complete, an historic prelude to a positive use determination. Unfortunately, the Application ultimately received a negative Use Determination on May 23, 2011.

At no time prior to the negative Use Determination did the TCEQ provide an indication that the merits of the technical descriptions or statutory citations submitted were lacking. Neither the administrative notice of completion nor, more importantly, the technical declaration of completion led the Appellant to believe that a lack of merit existed in its Application, including cited environmental rules (Rules 30 TAC §§ 115.121(c), 115.122(c) and 106.492) under which the installation of the subject PCP allows the Facility to meet or exceed TCEQ-established Volatile Organic Compound ("VOC") control limits.

Providing notices of such application deficiencies would have allowed for the modification of the Application under the filing instructions in force at the time of the Application's submission. Issuing the negative Use Determination with no prior indication of deficiency eliminated the Appellant's ability to revise and respond to the TCEQ's concerns, or to determine if the Application should be withdrawn, with a refund of Application filing fees.

The subject PCP, working upstream of the Facility utility flare - an emissions control device - captures waste gases or liquid streams, some of which may contain VOCs, and vents these streams to the utility flare, as the Facility processes raw natural gas. The Tier III Application submitted on April 28, 2010 identified these two concurrent functions. The original Tier I Application envisioned the integrated use of the PCP and the utility flare and the Tier III Application consistently cited the environmental rules used in the original Tier I application filing.

Executive Director's Brief Issue #3

"The Executive Director's negative use determination should be affirmed because Williams' argument that the Processing System was installed to prevent the inadvertent release of VOCs and other wastes is immaterial because no environmental rule is being met or exceeded by the equipment."

Reply to Issue #3

The inadvertent release of VOCs or other waste gases or liquid streams from Facility activities poses a risk to the environment. The installation of the subject PCP reduces the opportunity for such emissions through their destruction in the utility flare.

Alternatively, in lieu of the Tier III Application filing, the PCP's purpose is analogous to that of the equipment qualifying for 100% exemption within the Equipment & Categories List ("ECL") item A-185, *Vapor/Liquid Recovery Equipment (for venting to a control device)*, in force at the time of the Application filing. The ECL's Miscellaneous Control Equipment category A-185 provides for the exemption of "*Piping, blowers, vacuum pumps, compressors, etc. – used to capture a waste gas or liquid stream and vent to a control device. Including those used to eliminate emissions associated with loading tank trucks, rail cars, and barges.*" *[emphasis added]*

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TCEQ Docket No. 2011-0996-MIS-U

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