

Office of the Chief Clerk, MC 105  
Building F  
TCEQ  
12100 Park 35 Circle  
Austin, TX 78753

June 3, 2014

Re: Response to Appeal of Use Determination Certificate  
DCP Sand Hills Pipeline, LLC  
Sand Hills Pipeline – Nondestructive Testing Expenditures  
Edwards County  
Application Number: 17494

CHIEF CLERKS OFFICE

2014 JUN -4 PM 3:13

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Dear Sir or Madam:

In accordance with Title 30, Texas Administrative Code ("30 TAC") §17.25 and the Appeal of the Executive Director's Use Determination notice dated May 16, 2014, this letter is a Response Brief to the Edwards Central Appraisal District Appeal (the "Appellant") of Use Determination Certificate (the "Appeal") filed with Texas Commission on Environmental Quality ("TCEQ") related to Use Determination Application number 17494 (the "Application"). The subject Appeal was received by TCEQ on February 24, 2014. This Response Brief is filed on behalf of DCP Sand Hills Pipeline, LLC (the "Taxpayer").

**Application Description**

The subject Application, dated December 19, 2013, was filed pursuant to the Texas Commission on Environmental Quality's ("TCEQ's") Tax Relief for Pollution Control Property Program for the Sand Hills Pipeline's (the "Pipeline's") eligible Pollution Control Property ("PCP"). The Pipeline is a 720-mile Natural Gas Liquids ("NGLs") pipeline placed in service in Texas between 2013 and 2014.

The Application's PCP consists of Nondestructive Testing ("NDT") Expenditures for the detection of Pipeline weld defects as required by 30 TAC §355.4 and Title 49, Code of Federal Regulations ("49 CFR") §195.234(a).

## Summary of Appeal

Appellant states the following in the Appeal filing:

"The Property **does not exist** in Edwards County. The property as described on the Use Determination is **intangible and not taxable**. They filed for an exemption on a **test**. The **test** is not part of the pipeline. As Chief Appraiser, I will have to deny the exemption due to that fact when filed for in April."

## Applicant Response to Appeal

The Applicant has prepared the following in response to this appeal.

### *Property Tax Cost Classification and Valuation Considerations*

The subject NDT expenditures are capital expenditures for the Pipeline, mandated as noted earlier by 30 TAC §355.4 and 49 CFR §195.234(a), and incurred at the time of the Pipeline's construction. Pipeline expenditures, including NDT Expenditures, were then capitalized and added to the Pipeline capital costs upon construction completion/in-service within the taxpayer's accounting and fixed asset records.

The Association for the Advancement of Cost Engineering, International ("AACE, International") defines "cost" as:

*"The value of an activity or asset (such as the pipe for the Pipeline)...Resources utilized (such as those for the Pipeline) are categorized as material, labor and 'other'.<sup>1</sup>*

Further, AACE, International defines the path by which resources are converted to a final activity or asset produced (such as the installed pipe of the Pipeline in service) as a 'project'.<sup>2</sup>

*"The 'other' cost category consists of resources needed to support the (project) activity and/or asset (such as testing activities of Pipeline pipe welds). An example would be the facilities needed to produce an (project) activity or asset..."<sup>3</sup>*

*Direct costs are those resources that are expended solely to complete the (project) activity or asset (such as the installed pipe of the Pipeline)...any cost that is specifically identified with a particular final cost objective (element), but not*

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<sup>1</sup> AACE International; Skills and Knowledge of Cost Engineering, Chapter 1 – Cost Elements, 5<sup>th</sup> Ed., revised, p.1.1.

<sup>2</sup> Ibid. p.1.2.

<sup>3</sup> Ibid. p.1.2.

*necessarily limited to items that are incorporated in the end product as material or labor.*<sup>4</sup>

*Indirect costs are those resources that need to be expended to support the (project) activity or asset but that are also associated with other (project) activities and assets. Any cost not directly identified with a single final (project) cost objective but identified with two or more final (project) cost objectives.*<sup>5</sup>

In Texas, the subject NDT costs are required for Pipeline pipe installation and operation and are therefore direct costs incident to the construction of the installed pipe of the Pipeline. As such, these NDT costs are assigned the classification of tangible personal property for Property Tax reporting purposes. As well, Taxpayer has considered the subject NDT Expenditures to be part of the tangible personal property and included them in its 2014 *Form 50-144, Business Personal Property Rendition of Taxable Property* (the "Rendition Form") for the Pipeline. Therefore, in accordance with the accounting and Property Tax treatments described, the subject NDT Expenditures are clearly part of the tangible personal property, subject to annual depreciation, along with the balance of Pipeline's tangible personal property.

Further, when considering Pipeline market values developed from the cost approach or the income approach, one would include the value of NDT Expenditures. In the cost approach, either the actual booked cost of the Pipeline, which includes NDT Expenditures, or a Replacement Cost New ("RCN") method is used. The RCN method is demonstrative of the entire cost of constructing and placing the Pipeline in-service and as such, NDT Expenditures would be inherent in this value. If the income approach is used to develop Pipeline market values, it too would represent all costs included in the cost approach, including NDT Expenditures, as well.

#### *Pollution Control Considerations*

Per Texas Tax Code ("TTC") §11.31(a),

*"...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..." [emphasis added]*

This exemption statute does not specify that the pollution control equipment/facility be tangible personal property, only "personal property" which as defined in Title 1, Texas

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<sup>4</sup> Ibid. p.1.2.

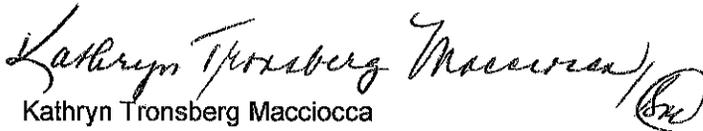
<sup>5</sup> Ibid. p.1.2.

Property Tax Code §1.04, as "property that is not real property." Further, TCEQ Regulatory Guidance, Publication No. RG-461 dated March 2011, describes the purpose of the guidelines on page 3 as "*guidance for persons seeking a property tax exemption for **capital expenditures** for pollution control property/equipment – meaning a facility, device, or method for the control of air, water, or land pollution.*" [emphasis added] As described above, NDT is a capital expenditure.

Furthermore, this statute defines exempt pollution control property as inclusive of "methods" for the control of air, water or land pollution. NDT Expenditures are a *method used to* preventing inadvertent leakage of NGLs to the land and waters of the State.

On behalf of the Taxpayer, I respectfully request that the Chief Appraiser of Edwards Central Appraisal District, the TCEQ Executive Director, and the TCEQ Commissioners uphold the positive Use Determination issued for the PCP described within the Application. If you have questions regarding this Response Brief, please contact me by telephone at (215) 430-6059; by e-mail at [kathryn.tronsberg@duffandphelps.com](mailto:kathryn.tronsberg@duffandphelps.com); or at the address listed below.

Very truly yours,

  
Kathryn Tronsberg Macciocca  
Director  
Property Tax

Attachment

For Reference: Ms. Sandee Giles, Chief Appraiser  
Edwards Central Appraisal District  
101 South Main Street, Rocksprings, Texas 78880

## Attachment A

Copy of  
Edwards County Appeal of  
TCEQ Positive Use Determination for  
Application #17494

Bryan W. Shaw, Ph.D., *Chairman*  
Toby Baker, *Commissioner*  
Zak Covar, *Commissioner*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

May 16, 2014

To: Persons on the Attached Mailing List (by mail and facsimile as indicated)

Re: Appeal of the Executive Director's Use Determination regarding DCP Sand Hills Pipeline, LLC; Application No. 17494; TCEQ Docket No. 2014-0288-MIS-U.

The above-referenced appeal (Appeal) was filed by the Edwards Central Appraisal District ("Appellant"), which requests Commission consideration of the positive use determination for nondestructive pipeline testing expenditures issued on February 6, 2014, by the Executive Director to DCP Sand Hills Pipeline, LLC ("Applicant") for Application No. 17494. As is our general practice with regard to Use Determination appeals, this office is requesting the filing of legal briefs or responses to the Appeal by the Executive Director, the Office of Public Interest Counsel, and the Applicant; and the subsequent filing of a legal reply to the responses by the Appellant. The briefs should contain a full discussion of the parties' legal and factual reasons for their positions.

This letter is to notify the Applicant, the Executive Director, and the Office of Public Interest Counsel that they may file a response brief in the Commission's Office of Chief Clerk (OCC) on or before 5:00 P.M. on Wednesday, June 4, 2014. The Appellant may file a reply brief to the response briefs on or before 5:00 P.M. on Monday, June 16, 2014. To be considered timely, an original and seven copies of any response or reply brief must be received in the OCC on or before the applicable 5:00 P.M. deadline. All briefs filed with the OCC should also be addressed to the attention of the Agenda Docket Clerk and be marked with the TCEQ Docket number provided above. All responses and replies must be filed with the Chief Clerk of the TCEQ. Responses and replies may be filed with the Chief Clerk electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and 7 copies with the Chief Clerk of the TCEQ. All response and reply briefs should also be mailed to all other persons on the attached mailing list on the same day mailed or filed in the Office of Chief Clerk. You will be notified by subsequent letter of the Commission meeting during which the Commissioners will consider this matter.

Chapter 17 of the Commission's rules (30 Texas Administrative Code Chapter 17) contains the requirements applicable to Use Determinations, including the rules that address the review standards and appeal process. The website of the Texas Secretary of State (<http://www.sos.state.tx.us/tac/index.shtml>) contains a complete copy of the Texas Administrative Code, including Chapter 17 of Title 30.

If you have any questions about the briefing schedule or related matters, please contact Elaine Lucas, Assistant General Counsel, at 512-239-6215.

Respectfully,

A handwritten signature in black ink, appearing to read "Anne Idsal".

Anne Idsal  
General Counsel

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