

TCEQ DOCKET NO. 2016-0337-MIS-U

APPEAL OF THE USE DETERMINATION	§	BEFORE THE
ISSUED BY THE EXECUTIVE	§	
DIRECTOR REGARDING ELG METALS,	§	TEXAS COMMISSION ON
INC.'S USE DETERMINATION	§	
APPLICATION NO. 19449	§	ENVIRONMENTAL QUALITY

HARRIS COUNTY APPRAISAL DISTRICT'S RESPONSE BRIEF TO ELG METALS, INC.'S APPEAL OF THE EXECUTIVE DIRECTOR'S NEGATIVE USE DETERMINATION FOR THE QUALIFYING LAND ON APPLICATION NO. 19449

TO THE HONORABLE COMMISSIONERS:

Harris County Appraisal District ("HCAD") files this Response Brief to the appeal of the Executive Director's Negative Use Determination for the Qualifying Land on Application No. 19449, as submitted by ELG Metals, Inc. (the "Appellant"), for the qualifying land located at 15135 Jacintoport Boulevard, Houston, Harris County, Texas 77015.

I. Background

On or around September 8, 2015, the Appellant applied to the Executive Director of the Texas Commission on Environmental Quality (the "Executive Director") for a use determination on a Stormwater Treatment System and all qualifying land. On September 21, 2015, the Executive Director determined that the Appellant's use determination application lacked sufficient information to conduct a technical review as specified in 30 TAC § 17.12 and requested that the Appellant revise its application to include, among other things, when the land serving as pollution control equipment had been acquired by the Appellant. The Appellant replied to the Executive Director's Notice of Administrative Completeness and Technical Deficiency on or around November 19, 2015 by submitting a revised application. On December 15, 2015, the Executive Director sent the Appellant a Notice of Technical Deficiency and requested that the Appellant revise its application again. This time the Executive Director

instructed the Appellant to remove the land associated with the Stormwater Treatment System from its application because it was acquired in 1989 and property acquired before January 1, 1994 is not eligible for a tax exemption under Section 11.31 of the Tax Code. The Appellant replied to the Executive Director's Notice of Technical Deficiency on or around February 1, 2016 by submitting a second revised application. On February 11, 2016, the Executive Director issued a one hundred percent (100%) positive use determination for the Stormwater Treatment System and a negative use determination for the qualifying land. In response to the Executive Director's negative use determination, the Appellant filed this appeal.

II. Argument and Authorities

A. Section 11.31, Texas Tax Code

The Executive Director correctly held that since the qualifying land was acquired prior to January 1, 1994, it is not eligible for a positive use determination. Section 11.31 of the Tax Code provides 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.*”¹ Subsection 11.31(b) defines “facility, device, or method for the control of air, water, or land pollution” as “land that is acquired *after* January 1, 1994 ...”² According to its first and second revised applications, the Appellant acquired the qualifying land in 1989 (see page 3 of Exhibits A and B). Since the Appellant acquired the qualifying land before January 1, 1994, by definition, it is not a “facility, device, or method for the control of air, water, or land pollution” and is not entitled to be exempt from taxation.

¹ Tex. Prop. Tax Code § 11.31(a) (WESTLAW current through 2015) (emphasis added).

² Tex. Prop. Tax Code § 11.31(b) (WESTLAW current through 2015) (emphasis added).

B. Section 17.4, Texas Administrative Code

Section 11.31 requires that the Texas Commission on Environmental Quality (“TCEQ”) establish rules to provide for the implementation of the pollution control property exemption,³ and “the executive director may not make a determination that property is pollution control property unless the property meets the standards established under [those rules].”⁴ The rules are codified in Title 30, Part 1, Chapter 17 of the Texas Administrative Code (“TAC”) and Section 17.4 of the TAC, entitled “Applicability”, states in pertinent part:

- (a) *To obtain a positive use determination...pollution control property must meet the following conditions.*
 - (1) Property must have been...*acquired...after* January 1, 1994.
 - (2) *Land* must include *only the portion of the land acquired after January 1, 1994*, that actually contains pollution control property.
 - (3) Equipment, structures, buildings, or devices must not have been taxable by any taxing unit in Texas on or before January 1, 1994, except that if construction of pollution control property was in progress on January 1, 1994, that portion of the property constructed, acquired, or installed after January 1, 1994, is eligible for a positive use determination.
 - (4) Property purchased from another owner is eligible for a positive use determination if it is acquired, constructed, or installed by the new owner after January 1, 1994, will be used as pollution control property, and was not taxable by any taxing unit in which the property is located on or before that date.
- (b) The executive director shall determine the portion of the pollution control property eligible for a positive use determination.
- (c) The executive director *may not* make a determination that property is pollution control property unless *all* requirements of this section...have been met.

30 TAC § 17.4 (2014) (emphasis added). Since the Appellant acquired the qualifying land before January 1, 1994, the land does not meet the conditions listed under §§ 17.4(a)(1) and (a)(2) and so according to § 17.4(c), the land cannot be pollution control property, and therefore, it is not entitled to a positive use determination or an exemption from taxation.

C. Analysis of Property Tax Exemption Statutes

It is well established in Texas that “[s]tatutory exemptions from taxation are subject to strict construction because they undermine equality and uniformity by placing a greater burden on some taxpaying businesses and individuals rather than placing the burden on all taxpayers

³ Tex. Prop. Tax Code. § 11.31(g) (WESTLAW current through 2015).

⁴ Tex. Prop. Tax Code § 11.31(h) (WESTLAW current through 2015).

equally.”⁵ Consequently, the burden to establish that one qualifies for an exemption is on the claimant and “[a]ll doubts are resolved *against* the granting of [the] exemption.”⁶ HCAD strongly urges this Commission to adhere to these principles in deciding this appeal.

III. Conclusion

Based on the foregoing and for the reasons stated herein, Harris County Appraisal District respectfully requests that the Commission deny ELG Metals, Inc.’s appeal, and affirm the Executive Director’s Negative Use Determination on the qualifying land issued for Application No. 19449.

Respectfully submitted,

By:


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ATTORNEY FOR,
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DISTRICT

⁵ *North Alamo Water Supply Corporation v. Willacy County Appraisal District, et al*, 804 S.W. 2d 894, 899 (Tex. 1991).

⁶ *Mont Belvieu Caverns, LLC v. Texas Commission on Environmental Quality, et al*, 382 S.W.3d 472, 487 (Tex.App.–Austin 2012, no pet.) (emphasis added).

EXHIBIT A

Texas Commission on Environmental Quality

Use Determination for Pollution Control Property Application

A person seeking a use determination must complete this application form. For assistance in completing the application form please refer to the *Instructions for Use Determination for Pollution Control Property Application Form TCEQ-00611*, as well as the rules governing the Tax Relief Program in Title 30 Texas Administrative Code Chapter 17 (30 TAC 17). Information relating to completing this application form is also available in the TCEQ regulatory guidance document, *Property-Tax Exemptions for Pollution Control Property, RG-461*. For additional assistance, please call the Tax Relief Program at 512-239-4900.

You must supply information for each field of this application form unless otherwise noted.

Section 1. Property Owner Information

1. Company Name of Owner: ELG Metals Inc.
2. Mailing Address: 15135 JACINTOPOORT BLVD
3. City, State, Zip: HOUSTON TX 77015
4. Customer Number (CN): CN601181027
5. Regulated Entity Number (RN): RN102185733
6. Is this property/equipment owned by the CN listed in Question 4? Yes No

If the answer is 'No,' please explain:

To be eligible for a positive use determination the property must be owned and operated by the same entity.

7. Is this property subject to any lease or lease-to-own agreement? Yes No

If the answer is 'Yes,' please explain:

8. Is this property operated by the RN listed in Question 5? Yes No

If the answer is 'No,' please explain:

To be eligible for a positive use determination the property must be owned and operated by the same entity.

Section 2. Physical Location of Property

1. Name of Facility or Unit where the property is physically located: Scrap Metal Reclaiming Facility
2. Type of Mfg. Process or Service: Scrap and Waste Materials
3. Street Address: 15135 JACINTOPOORT BLVD
4. City, State, Zip: HOUSTON TX 77015
5. County: Harris
6. Appraisal District Account Number(s): 0452730 and 041-032-001-0103

Section 3. Contact Name

1. Company Name: Associated Tax Appraisers
2. First Name of Contact: Andrej
3. Middle Initial:
4. Last Name of Contact: Fedor
5. Salutation: Mr. Mrs. Ms. Dr. Other:
6. Title:
7. Suffix:
8. Mailing Address: P.O. Box 91119
9. City, State, Zip: Austin, Texas 78709
10. Phone Number/Fax Number: 281-497-2200 / 713-627-8454
11. Email Address: afedor@nationalrealty.com
12. Self-Assigned Tracking Number (optional): 15-TCEQ-ELG Metals-001

Section 4. General Information

1. What is the type of ownership of this facility?
Corporation Limited Partner Other:
Sole Proprietor Limited Liability Corporation
Partnership Utility
2. Size of Company: Number of Employees
1 to 99 500 to 999 2,000 to 4,999
100 to 499 1,000 to 1,999 5,000 or more
3. Business Description: (Briefly describe the type of business or activity at the facility)
Scrap and Waste Materials
4. Provide the North American Industry Classification System (NAICS) six-digit code for this facility. NAICS 423930 / SIC 5093

Section 5. Property Description, Applicable Rule, and Environmental Benefit

For each piece, or each category, of pollution control property for which a use determination is being sought, answer the following questions.

Attach additional response sheets to the application for each piece of integrated pollution control property if a use determination is being sought for more than one (1) piece.

General Information

1. Name the property: Stormwater Treatment System
2. Is the property used 100% as pollution control equipment? Yes No
Explain your answer: This property is in standard use and identified on the TCEQ's Tier I Table. In addition, the property was installed solely for the abatement of pollution as required by law.
3. Does the property generate a Marketable Product? Yes No

Marketable Product: Anything produced or recovered using pollution control property that is sold as a product, is accumulated for later use, or is used as a raw material in a manufacturing process. Marketable product includes, but is not limited to, anything recovered or produced using the pollution control property and sold, traded, accumulated for later use, or used in a manufacturing process (including at a different facility).

If the answer is 'Yes,' describe the marketable product:

4. What is the appropriate Tier I Table or Expedited Review List number? W-59
5. Is the property integrated pollution control equipment? Yes No

If the answer is 'No,' separate applications must be filed for each piece of property.

6. List applicable permit number(s) for the pollution control property: WQ0005018000, TX0106861 and TX0134619

Incremental Cost Difference

7. Is the Tier I Table item number A-86, A-112, A-114, A-182, or S-22? Yes No

If the answer is 'Yes,' the use determination percentage is based on the incremental cost difference and you must answer the following questions:

8. What is the cost of the new piece of property?
9. What is the cost of the comparable property without controls?
10. How was the value of the comparable property calculated?

Property Description

11. Describe the property. (What is it? Where is it located within the production process? How is it used to control, prevent, or monitor pollution?)

The sole purpose of this equipment is to gather the storm water from all over the property then remove the suspended solids and oil before discharge as required by ELG's active Permit to Discharge Wastes (WQ0005018000). The treatment system was installed due to a 2009 letter from the TCEQ requiring its installation (See Attached). With regard to qualifying land, please be aware that it was acquired in 1989.

Applicable Rule

12. What adopted environmental rule or regulation is being met by the construction or installation of the property? The citation must be to the specific section, subsection, paragraph, subparagraph, or clause level. Describe how the property meets or exceeds the requirements. 30 TAC §305.125(1) requires a permittee to comply with all permit conditions. See the attached effluent limitations on ELG's active Permit to Discharge Wastes (WQ0005018000); also see the TCEQ's letter requiring installation.

Environmental Benefit

13. What is the anticipated environmental benefit related to the construction or installation of the property? Limits, contains and treats stormwater associated with industrial activity.

Section 6. Process Flow Diagram (Optional)

Attach documentation to the application showing a Process Flow Diagram for the property.

Section 7. Partial-Use Percentage Calculation

This section must be completed for all Tier III applications. Attach documentation to the application showing the calculations used to determine the partial-use percentage for the property.

Section 8. Property Categories and Costs

List each piece of integrated pollution control property for which a use determination is being sought.

Property Name	Tier I Table No. or Expedited Review List No.	Use Percent	Estimated Dollar Value
Land:			
Property: SEE ATTACHED	W-59	100%	SEE ATTACHED
Property: All qualifying land			
Property:			
Property:			
Total:			

Attach additional response sheets to the application if more than five (5) pieces of property need to be listed.

NOTE: Separate applications must be filed for each piece of nonintegrated pollution control property.

Section 9. Type of Application and Fee

1. Type of Application being filed: *Select only one.*

Tier I – Fee: \$150

Tier II – Fee: \$1,000

Tier III – Fee: \$2,500

2. Fee Payment Type:

Check

Money Order

Electronic Payment

3. Payment Receipt Number: SEE ATTACHED

4. Payment Amount: \$150

5. Payer Name on Payment: SEE ATTACHED

6. Total Amount of Payment: \$150

NOTE: Enclose a check, money order to the TCEQ, or a copy of the ePay receipt along with the application to cover the required fee.

In accordance with the TCEQ's Delinquent Fee Protocol, the Tax Relief Program will not consider applications administratively complete until all delinquent fees the company owes to the TCEQ are paid.

Information regarding the TCEQ's Delinquent Fee Protocol is available at:

<http://www.tceq.state.tx.us/agency/delin/index.html>.

Section 10. Certification Statement

Must be signed by owner or designated representative.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I further certify that the property listed in this application is eligible for a tax exemption under Texas Tax Code, §11.31 given that:

- the property is not solely used, constructed, acquired, or installed to manufacture or produce a good or provide a service, including a good or service that prevents, monitors, controls, or reduces air, water, or land pollution,
- the environmental benefit associated with the property is not wholly derived from the use or characteristics of the goods or services produced by the property,
- the property is wholly or partly used, constructed, acquired, or installed to meet or exceed law, rule, regulation adopted by an 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,
- the property is not used for residential purposes, or for recreational, park, or scenic uses as defined by Texas Tax Code, §23.81,
- the property is not a motor vehicle, except for a dedicated service motor vehicle used solely for pollution control, and
- the property was not acquired, constructed, or installed before January 1, 1994.

I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Printed Name: Andrej Fedor

Date: 11/19/2015

Signature: _____



Title:

Company Name: Associated Tax Appraisers

Under Texas Penal Code 37.10, if you make a false statement on this application, you could receive a jail term of up to one year and a fine up to \$2,000, or a prison term of two to 10 years and a fine of up to \$5,000.

Application Submission

Send the completed application and the appropriate fee, along with a complete copy of the completed application for the appraisal district, to:

U.S. Mail

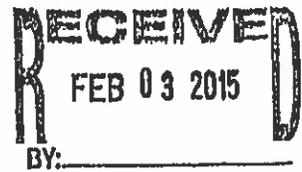
Cashiers Office, MC 214
Tax Relief Program
TCEQ
PO Box 13088
Austin TX 78711-3088

Physical Address

Cashier's Office, MC 214
Building A
TCEQ
12100 Park 35 Circle
Austin TX 78753

EXHIBIT B

19449 Rev 2



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If the answer is 'Yes,' please explain:

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100 to 499 1,000 to 1,999 5,000 or more
3. Business Description: (Briefly describe the type of business or activity at the facility)
Scrap and Waste Materials
4. Provide the North American Industry Classification System (NAICS) six-digit code for this facility. NAICS 423930 / SIC 5093

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If the answer is 'Yes,' describe the marketable product:

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If the answer is 'No,' separate applications must be filed for each piece of property.

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10. How was the value of the comparable property calculated?

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Applicable Rule

12. What adopted environmental rule or regulation is being met by the construction or installation of the property? The citation must be to the specific section, subsection, paragraph, subparagraph, or clause level. Describe how the property meets or exceeds the requirements. 30 TAC §305.125(1) requires a permittee to comply with all permit conditions. See the attached effluent limitations on ELG's active Permit to Discharge Wastes (WQ0005018000); also see the TCEQ's letter requiring installation.

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Must be signed by owner or designated representative.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I further certify that the property listed in this application is eligible for a tax exemption under Texas Tax Code, §11.31 given that:

- the property is not solely used, constructed, acquired, or installed to manufacture or produce a good or provide a service, including a good or service that prevents, monitors, controls, or reduces air, water, or land pollution,
- the environmental benefit associated with the property is not wholly derived from the use or characteristics of the goods or services produced by the property,
- the property is wholly or partly used, constructed, acquired, or installed to meet or exceed law, rule, regulation adopted by an 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,
- the property is not used for residential purposes, or for recreational, park, or scenic uses as defined by Texas Tax Code, §23.81,
- the property is not a motor vehicle, except for a dedicated service motor vehicle used solely for pollution control, and
- the property was not acquired, constructed, or installed before January 1, 1994.

I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Printed Name: Andrej Fedor

Date: 2/1/2016

Signature: _____



Title:

Company Name: Associated Tax Appraisers

Under Texas Penal Code 37.10, if you make a false statement on this application, you could receive a jail term of up to one year and a fine up to \$2,000, or a prison term of two to 10 years and a fine of up to \$5,000.

Application Submission

Send the completed application and the appropriate fee, along with a complete copy of the completed application for the appraisal district, to:

U.S. Mail

Cashiers Office, MC 214
Tax Relief Program
TCEQ
PO Box 13088
Austin TX 78711-3088

Physical Address

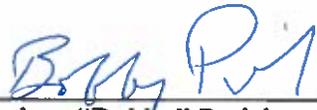
Cashier's Office, MC 214
Building A
TCEQ
12100 Park 35 Circle
Austin TX 78753

TCEQ DOCKET NO. 2016-0337-MIS-U

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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2016, an original of the Harris County Appraisal District's Response Brief was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, electronically at <http://www14.tceq.texas.gov/epic/eFiling/>, and that copies were also mailed to all other persons on the attached mailing list on the same day.



Robert "Bobby" Preisler