

**ELG METALS INC.'S
REPLY TO RESPONSE BRIEFS FILED BY
THE TCEQ'S OFFICE OF PUBLIC INTEREST COUNSEL,
THE TCEQ'S EXECUTIVE DIRECTOR,
AND THE HARRIS COUNTY APPRAISAL DISTRICT**

TO: Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

FROM: Associated Tax Appraisers, Agent for ELG Metals, Inc.
4543 Post Oak Place, Suite 232
Houston, Texas 77027

RE: TCEQ Docket No: 2016-0337-MIS-U
Use Determination App. No: 19449
Applicant: ELG Metals Inc.
15135 Jacintoport Blvd., Houston, TX 77015
Regulated Entity No: RN102185733
Customer Reference No: CN601181027

This document is ELG Metals Inc.'s (hereinafter referred to as "ELG") reply to the response briefs filed by the Texas Commission of Environmental Quality's Office of Public Interest Counsel (hereinafter referred to as "OPIC") and Executive Director (hereinafter referred to as "ED") and the Harris County Appraisal District (hereinafter referred to as "HCAD") in regard to ELG's appeal of the Executive Director's Negative Use Determination for the qualifying land made the basis of its Use Determination for Pollution Control Property Application No. 19449.

For reasons described below, ELG respectfully requests that the Texas Commission on Environmental Quality (hereinafter referred to as "TCEQ") affirms its appeal and overturns the Executive Director's Negative Use Determination for the qualifying land made the basis of Use Determination for Pollution Control Property Application No. 19449.

**REPLY TO THE OFFICE OF PUBLIC
INTEREST COUNSEL'S RESPONSE BRIEF**

Response: “ELG’s appeal fails on multiple levels. By Rule, ELG must explain the basis for the appeal. ELG’s appeal consists of a one page letter which provides no explanation of the basis for the appeal. This appeal fails to comply with TCEQ rules governing appeal of a use determination, and on this ground alone, the Commission could deny ELG’s appeal.”

Reply: 30 Tex. Admin. Code §17.25(b)(5) does require an appellant to state the basis for the appeal of a use determination. ELG stated the basis for its appeal as the “the negative use determination for the qualifying land.” 30 Tex. Admin. Code §17.25(b)(5) does not require an explanation of the basis for the appeal, nor is its brevity grounds to deny an appeal.

Response: “The qualifying land included in ELG’s application fails to meet a key requirement for exemption under the Texas Tax Code. For land, the Tax Code states that a facility, device, or method for the control of air, water, or land pollution means land that is acquired after January 1, 1994. In the property description section of the application, ELG states that the qualifying land was acquired in 1989. The record also indicated the ED informed ELG that this land could not qualify for a tax exemption and asked ELG to remove the land from the application. ELG did not comply. As land that was acquired before January 1, 1994, the ELG land is statutorily prohibited from qualifying for a tax exemption.”

Reply: In 1989 the qualifying land made the basis of Use Determination for Pollution Control Property Application No. 19449 was acquired by Gulf Materials Recycling Corporation. A copy of the pertinent General Warranty Deed as attached hereto at Exhibit A. At the time, Gulf Materials Recycling Corporation was a separate legal entity incorporated in the State of Texas. The assets of Gulf Materials Recycling

Corporation were not conveyed to ELG Metals Inc. until after January 1, 1994. According to HCAD's records the ownership changed on December 22, 1997. A copy of HCAD's Ownership History is attached hereto at Exhibit B.

In addition, the portion of Texas Tax Code §11.31 applied to the qualifying land issue by the Texas Commission of Environmental Quality's Office of Public Interest Counsel does not take into consideration the second part of the statute, which extends the definition of a "facility, device, or method for the control of air, water, or land pollution" to *"any structure, building, installation, excavation, machinery, equipment, or device, and any attachment or addition to or reconstruction, replacement, or improvement of that property."* Construction and/or installation of the Stormwater Treatment System, which received a positive use determination under the same Use Determination Application, required the excavation and improvement of the qualifying land at issue. The qualifying land is part of the Stormwater Treatment System, which was installed after January 1, 1994.

REPLY TO THE EXECUTIVE DIRECTOR'S RESPONSE BRIEF

Response: "The Executive Director determined that the land identified in the application did not meet the requirements to qualify for a tax exemption as pollution control property. Article VIII, § 1-1 of the Texas Constitution specifically states that the tax exemption for pollution control property applies to real and personal property "that would otherwise be taxable for the first time on or after January 1, 1994." This is codified in the Texas Tax Code §11.31(b) and in 30 TAC § 17.4(a)(1), which requires that the "property must have been constructed, acquired, or installed after January 1, 1994." Additionally, 30 TAC § 17.6(1)(A), states that property is not entitled to a tax exemption solely on the basis that the property is used to

provide a service that prevents, monitors, or reduces air, water, or land pollution.

In its application, the Applicant states that the land was acquired in 1989, but that the use of the land changed between 1996 and 2011. Although the use of the land may have changed, ELG Metals was the owner of the property prior to January 1, 1994. Therefore, the Executive Director disagrees with the Applicant and asserts that the Applicant has failed to demonstrate that the land listed in the application meets the requirements of 30 TAC § 17.4 and § 17.6.”

Reply:

In 1989 the qualifying land made the basis of Use Determination for Pollution Control Property Application No. 19449 was acquired by Gulf Materials Recycling Corporation. A copy of the pertinent General Warranty Deed as attached hereto at Exhibit A. At the time, Gulf Materials Recycling Corporation was a separate legal entity incorporated in the State of Texas. The assets of Gulf Materials Recycling Corporation were not conveyed to ELG Metals Inc. until after January 1, 1994. According to HCAD’s records the ownership changed on December 22, 1997. A copy of HCAD’s Ownership History is attached hereto at Exhibit B.

In addition, the portion of Texas Tax Code §11.31 applied to the qualifying land issue by the Texas Commission of Environmental Quality’s Executive Director does not take into consideration the second part of the statute, which extends the definition of a “facility, device, or method for the control of air, water, or land pollution” to “*any structure, building, installation, excavation, machinery, equipment, or device, and any attachment or addition to or reconstruction, replacement, or improvement of that property.*” Construction and/or installation of the Stormwater Treatment System, which received a positive use determination under the same Use Determination Application, required the excavation and improvement of the qualifying land at issue. The qualifying land is part of the Stormwater Treatment System, which was installed after January 1, 1994.

REPLY TO THE HARRIS COUNTY APPRAISAL DISTRICT'S RESPONSE BRIEF

Response: “Section 11.31 of the Tax Code provides that “[a] person is 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.” 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...” According to its first and revised applications, the Appellant acquired land 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.”

Reply: In 1989 the qualifying land made the basis of Use Determination for Pollution Control Property Application No. 19449 was acquired by Gulf Materials Recycling Corporation. A copy of the pertinent General Warranty Deed as attached hereto at Exhibit A. At the time, Gulf Materials Recycling Corporation was a separate legal entity incorporated in the State of Texas. The assets of Gulf Materials Recycling Corporation were not conveyed to ELG Metals Inc. until after January 1, 1994. According to HCAD's records the ownership changed on December 22, 1997. A copy of HCAD's Ownership History is attached hereto at Exhibit B.

In addition, the portion of Texas Tax Code §11.31 applied to the qualifying land issue by the Harris County Appraisal District does not take into consideration the second part of the statute, which extends the definition of a “facility, device, or method for the control of air, water, or land pollution” to ***“any structure, building, installation, excavation, machinery, equipment, or device, and any attachment or addition to or reconstruction, replacement, or improvement of that property.”***

Construction and/or installation of the Stormwater Treatment System, which received a positive use determination under the same Use Determination Application, required the excavation and improvement of the qualifying land at issue. The qualifying land is part of the Stormwater Treatment System, which was installed after January 1, 1994.

Mailing List
ELG Metals Inc.'s
TCEQ Docket No. 2016-0337-MIS-U

ELG Metals, Inc.
Southern Division
15135 Jacintoport Blvd.
Houston, TX 77015
281/457-2100 FAX
281/457-2500

Ron Hatlett
TCEQ Office of Air MC 110
P.O. Box 13087
Austin, Texas 78711-3087
512/239-4900 FAX 512/239-6188
ronald.hatlett@tceq.texas.gov

Ronald P. Little
Associated Tax Appraisers
4543 Post Oak Place, #232
Houston, Texas 77027
281/497-2200 FAX 713/627-8454
rlittle@nationalrealty.com

Robert Martinez
TCEQ Environmental Law Division MC 173
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0600 FAX 512/239-0606
robert.martinez@tceq.texas.gov

Andrej Fedor
Associated Tax Appraisers
P.O. Box 91119
Austin Texas 78709
512/894-2095 FAX 512/894-2076
ata@atatax.net

Vic McWherter
Garrett Arthur
TCEQ Office of Public Interest Counsel MC 103
P.O. Box 13087
Austin, Texas 78711-3087
512/239-6363 FAX 512/239-6377
vic.mcwherter@tceq.texas.gov
garret.arthur@tceq.texas.gov

Chief Appraiser
Harris County Appraisal District
P.O. Box 922004
Houston, Texas 77292
713/812-5800 FAX 957-5210

Docket Clerk
TCEQ Office of Chief Clerk MC 105
P.O. Box 13087
Austin, Texas 78711-3087
512/239-3300 FAX 512/239-3311

Chief Appraiser
Harris County Appraisal District
2800 N. Loop West
Houston, Texas 77092
713/812-5800 FAX 957-5210

David Brymer
Shelley Naik
TCEQ Office of Air MC 206
P.O. Box 13087
Austin, Texas 78711-3087
512/239-4900 FAX 512/239-6188
david.brymer@tceq.texas.gov
shelley.naik@tceq.texas.gov

159-67-0105

Address of Grantee:

P.O. Box 96166
HOUSTON TEXAS 77215-6166

THE STATE OF TEXAS §
COUNTY OF HARRIS §

This instrument was acknowledged before me on Oct 6, 1989, by Carlisle Jones Sr. President of Birmingham Rail & Locomotive Co., Inc., on behalf of such corporation.

(S.E.W.L.)

Virginia V. Gray
Notary Public in and for
said County and State

My Commission Expires:

January 1, 1991

Printed Name of Notary:

VIRGINIA V. GRAY

AFTER RECORDING RETURN TO:

EF76
89100501

EXHIBIT "A"

July 21, 1987

159-67-0106

DESCRIPTION

BEING 6.0000 acres of land located in the Richard and Robert Vince Survey, Abstract No. 76, Harris County, Texas and being a portion of that certain 4430.688 acre tract of land conveyed to Jacintoport Corporation by deed recorded under County Clerk's File No. P 851415 of the Official Public Records of Real Property, Harris County, Texas, said 6.0000 acres of land is more particularly described as follows:

COMMENCING at the intersection of the east right-of-way line of Appelt Road (based on a width of 68 feet) with the north right-of-way line of Jacintoport Boulevard (based on a width of 180 feet) from which a 5/8 inch iron rod found bears South 75 deg. 27 min. 56 sec. East-18.00 feet;

THENCE South 75 deg. 27 min. 56 sec. East, along said north right-of-way line, a distance of 197.39 feet to the POINT OF BEGINNING having coordinates of X=3,223,724.48 and Y=718,618.624 feet;

THENCE North 14 deg. 37 min. 36 sec. East, a distance of 118.22 feet to the northwest corner of a metal building;

THENCE South 75 deg. 22 min. 24 sec. East, along the north edge of said metal building, a distance of 16.81 feet;

THENCE North 14 deg. 37 min. 36 sec. East, at 14.85 feet pass the southwest corner of a metal building, at 95.85 feet pass the northwest corner of a metal building, continuing the same course a total distance of 195.85 feet to a nail set in concrete;

THENCE South 75 deg. 27 min. 56 sec. East, a distance of 68.16 feet;

THENCE North 14 deg. 32 min. 04 sec. East, a distance of 499.78 feet to the northwest corner of the herein described tract;

THENCE South 75 deg. 27 min. 56 sec. East, a distance of 326.01 feet to the northeast corner of the herein described tract in the west line of a 45 foot wide Missouri Pacific Railroad right-of-way from which a chain link fence corner post bears South 88 deg. 48 min. 81 sec. West-4.74 feet;

THENCE South 14 deg. 32 min. 04 sec. West, along the west line of said Missouri Pacific Railroad right-of-way, a distance of 422.81 feet to the beginning of a curve to the right;

THENCE continuing along the west line of said Missouri Pacific Railroad right-of-way same being the arc of said curve having a Central Angle of 51 deg. 26 min. 84 sec., a Radius of 515.42 feet, an Arc Length of 462.69 feet and a Long Chord which bears South 48 deg. 15 min. 86 sec. West-447.31 feet to a 5/8 inch iron rod found for the southeast corner of the herein described tract in the north right-of-way line of said Jacintoport Boulevard;

THENCE North 75 deg. 27 min. 56 sec. West, along said north right-of-way line, a distance of 216.56 feet to the POINT OF BEGINNING and containing 6.0000 acre of land.

E. L. Smoys, Jr.
E. L. Smoys, Jr.
Registered Public Surveyor No. 1949

ABS76.ELS
ELS/bc



159-67-0107

EXHIBIT B TO SPECIAL WARRANTY DEED

PERMITTED EXCEPTIONS

1. Restrictive covenants filed of record under Clerk's File No. F305216 of the Real Property Records of Harris County, Texas.
2. An easement 65 feet wide along the rear (northerly) property line, together with an unobstructed aerial easement 10 feet in width south of and adjacent thereto, granted to Houston Lighting & Power Company by instrument recorded in Volume 6774, Page 366 of the Deed Records of Harris County, Texas.
3. Reservation by Grantor unto itself, its successors and assigns of a private, perpetual, nonexclusive easement and right-of-way (herein called the "Utility Bank Easement") as set out in Paragraph I, Part III of Deed dated September 21, 1977, from Jacintoport Corporation to Birmingham Rail & Locomotive, Inc. filed September 21, 1977, under Clerk's File No. F305216 of the Real Property Records of Harris County, Texas.
4. An unobstructed easement 10 feet in width and 59.3 feet in length at and below ground level and upward to a plane 20 feet above the ground, and from said plane and upward 20 feet in width, located in the southerly portion of subject property, as granted to Houston Lighting & Power Company by instrument recorded under Clerk's File No. F647090 of the Real Property Records of Harris County, Texas.
5. The conveyance by the United States of America of all right, title and interest of the United States of America in and to all minerals and mineral rights, including gas and oil in, and under said property and those premises subject to that certain Deed Without Warranty dated October 13, 1970, from the United States of America to William E. Brock, recorded in Volume 8214, Page 438 of the Deed Records of Harris County, Texas, which deed provides that in connection with the development and production of the minerals so conveyed, including drilling therefor, the grantee therein, his heirs in title and assigns, lessees or otherwise, shall utilize only the surface locations designated in such deed as "DRILL SITES" which are located on Parcel Nos. B-15, B-16, B-29, B-43, B-44, B-47, B-53, B-57 and B-58 as referred to therein, none of which Drill Sites is located on said property.

159-67-0108

6. Covenants, rights and agreements by and between Grantor and Grantee in Deed dated September 21, 1977, from Jacintoport Corporation to Birmingham Rail & Locomotive, Inc., filed September 21, 1977, under Clerk's File No. F305216 of the Real Property Records of Harris County, Texas.

FILED
OCT 11 2 56 PM '89
Paula Anderson
COUNTY CLERK
HARRIS COUNTY, TEXAS

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS UNLAWFUL AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number _____ Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas on

OCT 11 1989



Paula Anderson
COUNTY CLERK
HARRIS COUNTY, TEXAS

EF76
89100503

RECORDER'S MEMORANDUM
AT THE TIME OF RECORDATION, THIS INSTRUMENT WAS FOUND TO BE INADEQUATE FOR THE BEST PHOTOGRAPHIC REPRODUCTION BECAUSE OF ILLEGIBILITY, CARBON OR PHOTO COPY, DISCOLORED PAPER, ETC.

EXHIBIT B



Ownership History: 0410320010103

**15135 JACINTOPORT BLVD
HOUSTON TX 77015**

Owner

ELG METALS INC

GULF MATERIALS RECYCLING

Effective Date

12/22/1997

1/1/1990

[end of record]

-close window-