

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*



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

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

April 7, 2008

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

2008 APR - 7 PM 2: 00  
CHIEF CLERKS OFFICE  
TEXAS COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: **VALERO REFINING - TEXAS, L.P.**  
**TCEQ DOCKET NOS. 2007-0724-MIS-U et al.**

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Response to Appeals of Use Determinations in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Arthur", written over a horizontal line.

Garrett Arthur, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

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**TCEQ DOCKET NOS.**

2007-0724-MIS-U, 2007-0732-MIS-U, 2007-0733-MIS-U, 2007-0734-MIS-U,  
2007-0735-MIS-U, 2007-0736-MIS-U, 2007-0737-MIS-U, 2007-0738-MIS-U,  
2007-0739-MIS-U, 2007-0740-MIS-U

**APPEAL OF EXECUTIVE DIRECTOR'S  
NEGATIVE USE DETERMINATIONS  
REGARDING VALERO REFINING –  
TEXAS, L.P., USE DETERMINATION NOS.  
06-10268, 06-10270, 06-10271, 06-10279,  
06-10280, 06-10281, 06-10282, 06-10283,  
06-10284, & 06-10285**

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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

CHIEF CLERKS OFFICE  
2008 APR - 7 PM 2:00  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**OFFICE OF PUBLIC INTEREST COUNSEL'S  
RESPONSE TO APPEALS OF USE DETERMINATIONS**

**To the members of the Texas Commission on Environmental Quality:**

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or the "Commission") files this response to the appeals of the Executive Director's (ED) negative use determinations regarding Valero Refining-Texas, L.P. ("Valero").

**I. Introduction**

In January of 2007, Valero applied for use determinations concerning certain equipment owned by Valero in Galveston, Harris, Jefferson, Moore, and Nueces Counties. Valero submitted its applications as Tier II applications. On April 18, 2007, the ED issued 10 negative use determinations, and on May 8, 2007, Valero appealed each of the ED's use determinations. For the reasons stated herein, OPIC recommends that all appeals by Valero be denied.

At each of 5 refineries, the equipment in question is involved in two projects. One is the production of ultra low sulfur diesel (ULSD). The other is desulphurization of gasoline. The equipment list for the ULSD projects is as follows: 2-Bed Reactors, Exchangers, Replacement

Convection Section, Air Cooler, Pumps, Compressors, Tankage, and Larger Piping. The equipment list for the gasoline desulphurization projects is as follows: Heater and Stack, Blend Pumps, Blend Loop, Meter/Valves, Reformer Gas Compressor, 2 Hydrogen Recycle Compressors, Booster Compressor, and Amine Scrubber. For each of the 5 refineries and for each project's equipment list, Valero is seeking tax exemption, resulting in 10 use determinations by the ED. All of the ULSD project use determinations are identical, and likewise for the gasoline desulphurization project use determinations. This response is therefore intended to apply to all 10 use determinations.

## II. Applicable Law

Chapter 17 of the TCEQ rules concerns tax relief for property used for environmental protection. Section 17.6 describes property which is not exempt from taxation and not entitled to a positive use determination. The rule states, “[P]roperty 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.” 30 Tex. Admin. Code § 17.6(1).

In § 17.15, review standards are provided in the form of a decision flow chart. The rule states, “The Decision Flow Chart shall be used for each item of property or process, submitted in a non-Tier IV use determination application to determine whether the particular item will qualify as pollution control property. The executive director shall apply the standards in the Decision Flow Chart when acting on a non-Tier IV use determination application.” 30 Tex. Admin. Code § 17.15(a). Among other considerations, the decision flow chart asks, “Is there an environmental benefit at the site?”. *Id.* In order for a piece of equipment or process to be eligible for a positive use determination, the item must generate a “yes” answer to this question. *Id.*

In the Tax Code, § 11.31 states, “A person is not entitled to an exemption from taxation under this section 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.” Tex. Tax Code § 11.31(a). Section 11.31 additionally states, “The executive director may not make a determination that property is pollution control property unless the property meets the standards established under rules adopted under this section.” Tex. Tax Code § 11.31(h).

### **III. Analysis**

In all of the ED’s use determinations, he states that because the environmental benefit of low sulfur fuel projects occurs when the consumer uses the fuel, the projects do not provide an environmental benefit at the site. Consequently, the ED concludes that these projects are not eligible for positive use determinations. The ED also states that the equipment listed in Valero’s applications is used for the purpose of producing a product which is designed to control air pollution, and Tax Code § 11.31(a) excludes the equipment from being eligible for a positive determination.

Valero’s appeals are the same for each of the ED’s use determinations and state that Tax Code § 11.31 contains no prerequisite that the facility or device for the control of air pollution provide a direct onsite environmental benefit in order to qualify for the pollution control property tax exemption. Valero disputes the ED’s conclusion that the equipment in question is used to produce a product which is designed to control air pollution. Instead, Valero apparently believes the ED has found that Valero literally manufactures pollution control property. Finally, Valero asserts that the property in question should be eligible for tax exemption regardless of whether the environmental benefit manifests itself onsite, within the borders of the facility, or offsite, outside the borders of the facility.

OPIC finds that the ED has correctly analyzed Valero's applications and supports the ED's negative use determinations. Under the applicable law, Valero is not entitled to an exemption from taxation solely on the basis that it manufactures or produces a product that reduces air pollution. *See* Tex. Tax Code § 11.31(a); 30 Tex. Admin. Code § 17.6(1). Valero submitted these as Tier II applications and is not claiming onsite environmental benefits, such as emission reductions from its refineries. Using the § 17.15 decision flow chart, OPIC finds, as did the ED, that without an onsite environmental benefit, Valero's equipment is not eligible for a positive use determination. The Chapter 17 rules were adopted under Tax Code § 11.31 and establish the standards for review of use determination applications. Having found that Valero's property does not meet the Chapter 17 standards, the ED was precluded, under Tax Code § 11.31(h), from finding that the subject property is pollution control property.

#### **IV. Conclusion**

Based on our review of the appeals, the Chief Clerk's files, and the applications, OPIC concurs with the ED's negative use determination for each of the Valero applications. OPIC finds that the ED correctly applied the relevant law, and the law dictates the negative use determinations made by the ED. Therefore, OPIC respectfully recommends the Commission deny all of Valero's appeals.

Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By 

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### CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2008, the original and eleven true and correct copies of the foregoing document were filed with the TCEQ Chief Clerk, and copies were served to all parties listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, or by deposit in the U.S. Mail.

  
Garrett Arthur

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