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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

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October 11, 2007

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OPINION COMMITTEE

FILE # ML-45388-07
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Return Receipt Requested

The Honorable Greg Abbott
Attorney General
State of Texas
P.O. Box 12548
Austin, TX 78711-2548

RQ-0635-GA

Re: Request for Attorney General's Opinion
Pursuant to Tex. Gov't Code §402.041, *et seq.*

Dear General Abbott:

Please accept this letter as a formal request for a legal opinion interpreting Texas law. I have provided background information below describing the facts relevant to the two questions presented below.

BACKGROUND

House Bill (H.B.) 3732, enacted during the Texas Legislature's 80th Session in 2007, created Texas Tax Code (TTC) §11.31(k), Tax Relief for Property Used for Environmental Protection, and amended TTC §26.045(f), Rollback Relief for Pollution Control Requirements. A copy of HB 3732 is enclosed for your review. TTC §11.31(k) and TTC §26.045(f) contain identical lists of eighteen categories for the control of air, water, or land pollution. Pollution control property on the list may be eligible for a partial or full tax abatement.

H.B. 3732 requires the Texas Commission on Environmental Quality (Commission or TCEQ) to adopt, by rule no later than January 1, 2008, a list of pollution control property for both TTC sections above, that must include the listed 18 categories of items. Any tax relief granted for pollution control property is permanent tax relief, as long as the pollution control property is used as required. Therefore, a broad interpretation could exclude a significant portion

of property value from the tax rolls; a narrow interpretation could prevent Texas businesses from receiving tax relief that the Legislature may have intended H.B. 3732 to provide.

TCEQ rulemaking No. 2007-055-017-AS seeks to implement the requirements of HB 3732. The TCEQ published the proposed rulemaking in the *Texas Register* on Friday, October 5, 2007, for public comment. For your review, I have attached Attorney General Opinion Letters Nos. JC-1372 and 96-128. Both Opinion Letters concerned TTC §11.31 and may or may not be relevant to analysis of the questions below.

QUESTIONS

I respectfully submit this request for an Attorney General's Opinion to address the following two questions:

1. Whether H.B. 3732 and its legislative history, limits the TCEQ's rule implementation of §11.31(k) of the Texas Tax Code to pollution control property associated with advanced clean energy projects, as defined in Texas Health and Safety Code, §382.003?
2. Whether H.B. 3732 and its legislative history, limits the TCEQ's rule implementation of §26.045(f) of the Texas Tax Code to pollution control property associated with advanced clean energy projects, as defined in Texas Health and Safety Code, §382.003?

Given the impact of this issue and the number of potential requests, we respectfully request your expedited consideration of this matter. Thank you in advance for your efforts in providing your opinion. Should you have any questions, please do not hesitate to contact my office.

Sincerely,



Buddy Garcia
Chairman

Enclosures