

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
TONY MASTIN, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

October 30, 2001

Re: Our file Number LR-01-169; Sales tax on assets related to landfill gas recovery wells and the generation of electricity.

Dear

This is in response to your inquiry concerning the subject noted above. I have copied the issues you have presented into this letter and each is followed by our response. Please note that the narrative portions of your letter must be read in conjunction with the responses to the issues you raise:

Your issues and our responses

- 1) ***Gas Collection and Extraction Systems - If*** Company A (or a subcontractor) will be responsible for the drilling of the gas recovery wells as well as the placement of the gas extraction network (pipes) within the landfill (both considered to be permanent, and both transferred to the landfill operator), will the format of the "construction" contract affect taxability (i.e. lump sum format versus separated format) in that the tax due on separately stated materials may be passed on to the landfill owner? Will materials that are left in place and billed to the landfill owner qualify for the pollution control exemption allowed under OK Stat. Tit. 68 §1359(6)?

Response: *Purchases by a contractor or by company A, that are used in the drilling of gas recovery wells and in the placement of gas extraction pipes, which are transferred to the landfill operator once they are completed, are taxable to either the contractor or to company A when they are purchased. The exemption found at 68 O.S. Section 1359(6) is available only for operations that will eliminate or remediate "hazardous waste". It is not applicable for non-hazardous solid waste, as might be found in landfills. If, as required by the statute, the operations are being conducted under a hazardous waste permit, the exemption may apply. In such a case, please provide information concerning the permit and the Taxpayer Assistance Division will*

be able to advise you as to the applicability of the exemption to the contemplated operations. Please refer to Oklahoma Tax Commission Rules 710:65-1-7; 710:65-13-80 and 710:65-19-56.

- 2) **Gas Processing Equipment** - *Given* that the landfill gas, which undergoes processing through the condensate separator vessel and the compression blower module, is absolutely integral to the production of electricity, will these components qualify for the pollution control tax exemption allowed for under OK Stat. Tit. 68 § 1359(6) in addition to the manufacturing exemption provided for under OK Stat. Tit. 68 § 1359(1)?

Response: *The Oklahoma Tax Commission has recognized that gas processing plants are engaged in the manufacture of natural gas and as such, since the gas processed will be used as a source of energy for the production of electricity, the transfer of the gas processing equipment to the affiliate of Company A may be made, exempt from sales tax, so long as the affiliate applies for and receives an Oklahoma Manufacturers Sales Exemption Permit, "MSEP". In order for Company A to purchase or import, into Oklahoma, the goods to be incorporated into the gas processing plants, exempt from sales or use tax, it will have to hold an Oklahoma Sales Tax Permit. The exemption found at 68 O.S. Section 1359(6) is available only for operations that will eliminate or remediate "hazardous waste". It is not applicable for non-hazardous solid waste, as might be found in landfills. . If, as required by the statute, the operations are being conducted under a "hazardous waste" permit, the exemption may apply. In such a case, please provide information concerning the permit and the Taxpayer Assistance Division will be able to advise you as to the applicability of the exemption to the contemplated operations.*

- 3) **Power Production Facility and Generating Plant** - *Given* that the power production facility and generating plant components including the gas engine generator module (power package transformer, ancillaries skid, heating and cooling systems, and radiator) and the electrical export module are integral to the production of electricity, will these components qualify for the pollution control tax exemption allowed for under OK Stat. Tit. 68 § 1359(6) in addition to the manufacturing exemption provided for under OK Stat. Tit. 68 § 1359(1)?

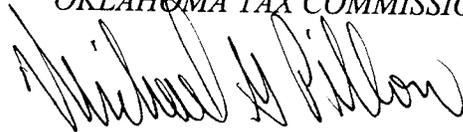
Response: *The affiliate of Company A that will operate the plant and hold title to the power production facility and the generating plant components, will qualify for the exemption found at 68 O.S. Section 1359(1), provided it obtains an "MSEP" and claims the exemption from sales tax to its vendor, Company A. In order for Company A to purchase or import, into Oklahoma, the goods to be incorporated into the power production facility and the generating plants, exempt from sales or use tax, it will have to hold an Oklahoma Sales Tax Permit. The exemption found at 68 O.S. Section 1359(6) is available only for operations that will eliminate or remediate "hazardous waste". It is not applicable for non-hazardous solid waste, as might be found in landfills. . If, as required by the statute, the operations are being conducted under a "hazardous waste" permit, the exemption may apply. In such a case, please provide*

information concerning the permit and the Taxpayer Assistance Division will be able to advise you as to the applicability of the exemption to the contemplated operations.

This response applies only to the circumstances set out in your request of October 17, 2001. Pursuant to Commission Rule 710:1-3-73(e), this Letter Ruling may be generally relied upon **only** by the entity to whom it is issued, assuming that all pertinent facts have been accurately and completely stated, and that there has been no change in applicable law.

If I can be of further assistance, please feel free to contact me.

Sincerely,
OKLAHOMA TAX COMMISSION

A handwritten signature in black ink, appearing to read "Michael G. Pillow", written over the typed name below.

Michael G. Pillow
Tax Policy Analyst

cc: Linda Whitaker
Taxpayer Assistance Division