

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*



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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
*Protecting Texas by Reducing and Preventing Pollution*

October 9, 2009

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

Re: **SARTOMER INC.**  
**TCEQ DOCKET NO. 2009-1468-MIS-U**

Dear Ms. Castañuela:

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

Sincerely,

  
Amy Swanholm, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 P.O. Box 13087 AUSTIN, TEXAS 78711-3087 512-239-6363

P.O. Box 13087

Austin, Texas 78711-3087

512-239-1000

Internet address: [www.tceq.state.tx.us](http://www.tceq.state.tx.us)

**TCEQ DOCKET NO. 2009-1468-MIS-U**

**APPEAL OF USE DETERMINATION §  
ISSUED BY THE ED REGARDING §  
SARTOMER RESIN §  
MANUFACTURING PLANT, TCEQ ID §  
NO. 13801**

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**OFFICE OF PUBLIC INTEREST COUNSEL'S  
RESPONSE TO APPEAL OF USE DETERMINATION**

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

The Office of the Public Interest Counsel (OPIC) files this response to Associated Tax Appraiser's appeal of the Executive Director's (ED) use determinations regarding Sartomer Resin Manufacturing Plant.

**I. Introduction**

In May of 2009, Associated Tax Appraisers submitted a Tier I use determination application to the Texas Commission on Environmental Quality (TCEQ). Associated Tax Appraisers, on behalf of Sartomer Resin Manufacturing Plant<sup>1</sup> (Sartomer) sought a use determination for a project to repack a cooling tower by replacing the old packaging with the purpose of improving cooling tower exchanger efficiency. The application states that delivering cooling more efficiently will increase the efficiency of the condensers, thereby reducing volatile organic (VOC) chemical emissions.

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<sup>1</sup>30 TAC § 17.25(a)(2)(A) and (B) states that an appeal of a use determination may be brought by the applicant seeking a use determination and the chief appraiser of the appraisal district for the county in which the property for which a use determination is sought is located. This appeal was submitted by Associated, a tax consulting company. Associated does not state, in their appeal, that they are authorized to act on behalf of the Satomer. However, because the use determination application was also submitted by Associated, OPIC assumes they are authorized to act as Sartomer's representative.

On June 5, 2009, the ED issued a notice of deficiency (NOD) for the application and requested additional information from Associated.<sup>2</sup> The ED listed three issues with the application.<sup>3</sup> Issue 1 and issue 2 were issues that prevented the ED from declaring the application administratively complete, while Issue 3 related to the technical review the ED would undertake, were the application found to be administratively complete.

In response, Satomer submitted an amended application responding to issue 1 and issue 2 from the ED's NOD, but provided no additional information on Issue 3. On July 14, 2009, the ED declared the application to be administratively complete. On August 18, 2009, the ED declared the application technically complete and in the same letter issued a negative use determination for Sartomer's application, concluding that the property is considered to be production equipment, not pollution control equipment.

On September 8, 2009, the TCEQ received a timely appeal of the ED's decision from Satomer. The appeal argues that the property in dispute meets or exceeds an adopted environmental regulation and that the only function of the project is to increase the efficiency of condensers and reduce VOC.

Based on the limited information available, OPIC recommends that the Commission deny Satomer's appeal and affirm the executive director's use determination

## **II. Applicable Law**

The applicable TCEQ rules concerning tax relief for property used for environmental protection are found in Title 30 of the Texas Administrative Code (TAC), Chapter 17. To obtain a positive use determination, "the pollution control property must be used, constructed, acquired, or installed wholly or partly to meet or exceed laws, rules, or regulations adopted by any 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." 30 TAC § 17.4(a). Chapter 17 contains a list of items (the Equipment and Categories List, or ECL) that have been predetermined as used either wholly or partly for pollution control purposes. 30 TAC § 17.14. The ECL contains two parts: "Part A is a list of the property that the executive director

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<sup>2</sup> See Attachment A for the ED's NOD, issued on June 5, 2009.

<sup>3</sup> Id.

has determined is used either wholly or partly for pollution control purposes, [and] Part B is a list of categories of property which is located in Texas Tax Code (TTC), §11.31(k).” 30 TAC § 17.14(a). In addition, there are four different types of use determination applications;

Tier I-- An application which contains property that is in Part A of the figure in §17.14(a) or that is necessary for the installation or operation of property located on Part A of the Equipment and Categories List; 30 TAC § 17.2(13)

Tier II-- An application for property that is used wholly for the control of air, water, and/or land pollution, but not on the Equipment and Categories List, located in §17.14(a); 30 TAC § 17.2(14)

Tier III-- An application for property used partially for the control of air, water, and/or land pollution but that is not included on the Equipment and Categories List, located in §17.14(a); 30 TAC § 17.2(15)

Tier IV-- An application containing only pollution control property which falls under a category located in Part B of the figure in §17.14(a). 30 TAC § 17.2(16)

Section 17.15(a) and (b) provide Decision Flow Charts for making use determinations. There are two Decision Flow Charts, one for non-Tier IV applications, and one for those applications with just items from Part B of the ECL (or Tier IV applications). 30 TAC § 17.15(a) and (b).

Under § 17.25, an appraisal district or applicant has 20 days to appeal a use determination issued by the ED. 30 TAC § 17.25(a)(2)(A) and (B); 30 TAC § 17.25(b). Upon a timely appeal, the Commission may either “deny the appeal and affirm the ED’s use determination” or “remand the matter to the ED for a new determination.” § 17.25(d)(2). Should the Commission remand the use determination, the ED shall conduct a new technical review and issue a new use determination. 30 TAC § 17.25(e)(1)(A) and (B). This determination is appealable under the same Chapter 17 procedures as the initial determination. 30 TAC § 17.25(e)(2). If the Commission denies the appeal and affirms the use determination, this decision is final and appealable. 30 TAC § 17.25(d)(3).

### **III. Analysis**

Satomer has appealed the ED’s decision to issue a negative use determination, based on the ED’s conclusion that cooling tower heat exchangers are not pollution control equipment.

Satomer argues that the cooling tower, which it refers to as pollution control equipment, meets or exceeds an adopted environmental regulation. Satomer also argues that the only function of the cooling tower is to increase the efficiency of condensers and reduce VOC emissions.

Satomer provides little argument to support its basis for appeal. Satomer provides no information to support its assertion that the cooling tower meets or exceeds an environmental regulation. The application lists 30 TAC Chapter 115, Subchapter B, Division 2, governing vent gas control, as the relevant environmental rule or regulation, but offers no specific citation. Nor does Satomer thoroughly explain how a project to repack a cooling tower allows it to meet or exceed environmental standards. Satomer simply asserts that the only function of replacing the heat exchanger is to increase the efficiency of the condensers and reduce VOC emissions. But it offers no information to support this statement. Furthermore, OPIC agrees with the ED that the property description contained in the application is inadequate.<sup>4</sup> Without more information to support Satomer's appeal, OPIC concludes that the ED's negative use determination was proper for the following reasons.

Satomer received notice that the ED needed more technical information in order to conduct a technical review of the application, during the administrative review period, but no additional information was provided by Satomer. There may have been some confusion because the ED requested additional technical information before the application was administratively complete, in the NOD sent on June 5, 2009.<sup>5</sup> And, when the ED sent out a letter declaring the application administratively complete, it did not request any additional technical information. Instead the letter stated that "if additional technical information is required, a NOD will be issued."<sup>6</sup> The ED did not issue a further NOD, but issued a negative use determination in the same letter that declared the application technically complete.

Despite the unusual time line, the amended application submitted in response to the NOD warranted a negative use determination. Satomer applied for a Tier I use determination, but the application does not meet the requirements for submitting a Tier I application, as shown by the Decision Flow Chart found at 30 TAC § 17.15(a). A Tier I application is appropriate when the

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<sup>4</sup> See Notice of Deficiency dated June 5, 2009, issued to Associated Tax Appraisers by the ED, included as Attachment A.

<sup>5</sup> See Attachment A.

<sup>6</sup> See Letter declaring the Use Determination Administratively Complete, dated July 14, 2009, issued to Associated Tax Appraisers, included as Attachment B.

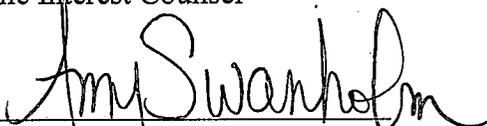
property in question is listed in Part A of the Equipment and Categories List in §17.14(a) or that is necessary for the installation or operation of property located on Part A of the Equipment and Categories List.<sup>7</sup> This list does not contain an entry for cooling towers, cooling tower repacking, or condensers associated with VOC emissions. Therefore, the application could not have been rehabilitated, even with additional technical information, and the ED correctly issued a negative use determination.

#### IV. Conclusion

The ED correctly issued a negative use determination. OPIC recommends the Commission deny the appeal and affirm the executive director's use determination under 30 TAC § 17.25(d)(2).

Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By   
Amy Swanhölm  
Assistant Public Interest Counsel  
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<sup>7</sup> 30 TAC § 17.2(13).

**CERTIFICATE OF SERVICE**

I hereby certify that on October 9, 2009, the original and seven 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.

  
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Amy Swanholm

# Attachment A

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Mark R. Vickery, P.C., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

June 05, 2009

ASSOCIATED TAX APPRAISERS  
RONALD P LITTLE  
4543 POST OAK PLACE #232  
HOUSTON TX 77027-

This letter is to inform you that during the administrative review of Use Determination Application, 13801, the reviewer has determined that additional information is required. This application was filed for the following facility:

SARTOMER RESIN MFG PLANT  
17335 WALLISVILLE RD  
HOUSTON TX

The additional information required is:

Issue 1: For item 10 on page 4 of 5 in the application, an incorrect entry appears to have been made for the decision flow chart (DFC) box that the item reached. Please note that under the current DFC, box 7 is for Tier IV items, which is inconsistent with this application.

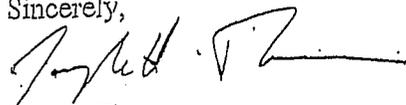
Issue 2: Only an original application was submitted, although 30 TAC 17.10(a)(1) requires both an original and a copy. Please submit both an original and a copy of the revised application.

Issue 3: This issue is technical rather than administrative in nature and does not need to be corrected for your application to be administratively complete. It is included here to facilitate further processing of your application. The description of property does not provide sufficient details on the control device, which is described as replacement packing for a cooling tower. Please provide a description of all sources of heat are routed to the cooling tower, where the tower is located, the type and purpose of condensers, any ancillary equipment included, and any ~~other relevant information, as well as a process flow diagram showing components of the~~ system (cooling tower, condensers, piping, etc.) and their relation to the rest of the facility.

Please provide the missing and/or incomplete information as soon as possible. As per 30 TAC 17.12(2)(A) the applicant must respond to a notice of deficiency (NOD) by providing the additional information required within 30 days of receipt of the NOD or the application will be

returned. Once the additional information has been received the administrative review of this application will resume. If you have any questions or require any assistance in developing the additional required information please contact the Tax Relief for Pollution Control Property Program at (512) 239-0012. Your response may be faxed to 512/239-5768, electronically mailed to [txrelief@tceq.state.tx.us](mailto:txrelief@tceq.state.tx.us), or sent by U.S. Mail.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Thomas", with a long horizontal flourish extending to the right.

Joseph Thomas

Tax Relief for Pollution Control Property Program

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# Attachment B

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
*Protecting Texas by Reducing and Preventing Pollution*

July 14, 2009

ASSOCIATED TAX APPRAISERS  
RONALD P LITTLE  
4543 POST OAK PLACE #232  
HOUSTON TX 77027 . -

This letter is to inform you that on 7/14/2009, Use Determination Application, 13801 (self assigned tracking number), was declared to be administratively complete. This application was filed for the following facility:

SARTOMER RESIN MFG PLANT  
17335 WALLISVILLE RD  
HOUSTON TX

The next step in the Use Determination Application process is the technical review of the application. If this is a Tier I, II, or III application the technical review will be completed within sixty days of the administrative complete date. If this is a Tier IV application the technical review will be completed within 30 days of the administrative complete date. If additional technical information is required a notice of deficiency letter (NOD) will be issued. The time period between the issuance of the NOD and the receipt of the response is not counted in determining the length of the technical review. The TCEQ will notify you after the technical review has been completed. In accordance with the statute, the TCEQ has mailed a notice of receipt of this Use Determination Application to the HARRIS County Appraisal District. Please contact the Tax Relief for Pollution Control Property Program at (512) 239-3100 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Thomas".

Joseph Thomas  
Program Specialist  
Tax Relief for Pollution Control Property Program

SARTOMER INC.  
TCEQ Docket No. 2009-1468-MIS-U

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