SARTOMER INC.'S REPLY TO THE TCEQ'S OFFICE OF PUBLIC INTEREST COUNSEL'S AND EXECUTIVE DIRECTOR'S RESPONSE BRIEFS

TO: LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle, MC105
Austin, Texas 78753

FROM: Ronald P. Little
Associated Tax Appraisers
4543 Post Oak Place, #232 Houston, Texas 77027

RE:

TCEQ Docket No:	2009-1679-MIS-U and 2009-1680-MIS-U
Application No:	13805 and 13806
Company Name:	Sartomer Inc.
Street Address:	8280 Sheldon Road, Channelview, Texas 77049
Appraisal District:	Harris County

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 DEC 18 PM 4: 43
CHIEF CLERKS OFFICE

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This document is Sartomer Inc.'s (hereinafter referred to as "Sartomer") reply to the Texas Commission on Environmental Quality (hereinafter referred to as "TCEQ") Office of Public Interest Counsel's (hereinafter referred to as "OPIC") and the TCEQ Executive Director's responses to Sartomer's appeals of Use Determination Application No(s). 13805 and 13806.

For reasons described below, Sartomer respectfully requests that the TCEQ affirm its appeals and set aside the Executive Director's Negative Use Determinations regarding Use Determination Application No(s). 13805 and 13806.

FACTUAL BACKGROUND

On or about May 18, 2009, Sartomer, by and through its agent of record, Associated Tax Appraisers (hereinafter referred to as "ATA"), filed two Tier 1 Applications for Tax Relief for Pollution Control Property with the TCEQ, which sought a positive use determination for two

wastewater treatment facilities located at it's 8280 Sheldon Road Plant WCV2 at 8280 Sheldon Road, Channelview, Texas 77049.

On or about June 15, 2009, ATA was in receipt of administrative notices of deficiency from the TCEQ's Tax Relief for Pollution Control Property, to which it replied on July 14, 2009.

On or about July 21, 2009, ATA was in receipt of notices from the TCEQ's Tax Relief for Pollution Control Property that Sartomer's applications were administratively complete.

On or about July 24, 2009, ATA was in receipt of technical notices of deficiency from the TCEQ's Tax Relief for Pollution Control Property, to which it replied on August 7, 2009.

On or about September 22, 2009, ATA was in receipt of the Executive Director's Negative Use Determinations for Use Determination Application No(s). 13805 and 13806, to which it replied by timely filing appeals on or about October 8, 2009, with the TCEQ's Chief Clerk.

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

The TCEQ Office of Public Counsel's response brief to Sartomer's appeal provides:

"Section 11.31(a) of the Texas Tax Code (TTC) reads: "A 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." Sartomer has not supported its application by producing the relevant tax rolls from the appraisal district evidencing ownership of the equipment, nor have they submitted a contract indicating they will be responsible for the taxes associated with the equipment at issue. 30 TAC §17.10(d) states that "all use determination applications shall contain ... any information that the executive director deems reasonably necessary to determine the eligibility of the application." The ED found that

documentation of ownership was lacking in Sartomer's original applications and continues to be absent in its appeals. OPIC agrees. Without such evidence it is impossible for the executive director to establish tax exemption eligibility under TTC §11.31 (a), and OPIC therefore finds Sartomer's applications fatally deficient."

REPLY: Sartomer has always maintained that it has an ownership interest in the wastewater treatment system made the basis of this appeal. In that regard, any reference made to Sartomer's responses to notices of deficiency, in which it erroneously stated that Lyondell Basell is the sole owner of the property in question and that Sartomer has no property tax liability for same, is misleading. Sartomer clearly communicated to the Tax Relief for Pollution Control Property Program that this statement was made in error, which facilitated an agreement to reconsider the negative use determinations.

Further, a verbal agreement was made on November 4, 2009, at the TCEQ's main office in Austin, Texas, between Ronald Hatlett of the TCEQ's Tax Relief for Pollution Control Property Program and Ronald P. Little of Associated Tax Appraisers that the two negative use determinations made the basis of this appeal would be overturned. In that regard the Tax Relief for Pollution Control Property Program requested that Sartomer provide them with a withdrawal of its appeals, a copy of its 2009 Personal Property Tax Rendition and a document stating it was the owner of the two wastewater treatment facilities in question. Sartomer responded by providing the TCEQ a withdrawal of their appeal (contingent upon the negative use determinations being overturned), a copy of their 2009 Personal Property Tax Rendition and a letter from Charles J.

Maruzzella, Comptroller of Sartomer Inc., that Sartomer is the rightful owner of the two wastewater treatment plants (CVON Wastewater-pbd and CVON Wastewater-sma) located at 8280 Sheldon Road.

In regard to the issue of ownership, please be advised that both wastewater treatment facilities are rendered by Sartomer on its Personal Property Tax Rendition and, as stated in its original appeal, the cost associated with both facilities represents Sartomer's contribution towards their construction and its ownership interest. Since the property in question constitutes personal property, there is no title or deed indicating ownership. There is, however, an implied agreement between Lyondell Basell and Sartomer that each maintains an ownership interest in the property, as confirmed by Charles J. Maruzzella, Comptroller of Sartomer Inc.

REPLY TO THE TCEQ EXECUTIVE DIRECTOR'S RESPONSE BRIEF

The TCEQ Executive Director's response brief to Sartomer's appeal provides:

1. SARTOMER IS NOT ELIGIBLE FOR A POSITIVE USE DETERMINATION BECAUSE THEY DO NOT HAVE AN OWNERSHIP INTEREST IN THE WASTEWATER TREATMENT SYSTEM AT ISSUE.

Section 11.31(a) of the Texas Tax Code provides that, "A 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." (emphasis added). 30 TAC § 17.1, which sets out the scope and purpose of TCEQ's Tax Relief for Pollution Control Property regulations, states that "This chapter is to establish the procedure and mechanism ***for an owner of pollution control property,*** to apply to the commission for a

determination of pollution control use." (emphasis added).

Sartomer's responses to the administrative and technical NODs issued by Executive Director staff expressly state that the wastewater treatment system at issue is owned by Lyondell Basell. As such, Sartomer is not eligible to receive a positive use determination under Section 11.31 of the Texas Tax Code or 30 TAC Chapter 17. Sartomer has not presented any evidence that it received an ownership interest in Lyondell Basell's wastewater treatment system in exchange for its contribution to the system upgrade. Similarly, filing a property rendition with the local tax appraisal district that lists a portion of Lyondell Basell's wastewater treatment system does not evidence an ownership interest in that system. Texas Tax Code § 22.01 sets out the general rules that apply to property renditions. Texas Tax Code Section 22.01 reads as follows:

> (a) ... [A] person shall render for taxation all tangible personal property used for the production of income that the person owns ***or that the person manages and controls as a fiduciary*** on January 1. A rendition statement shall contain:
>
> (1) ***the name and address of the property owner;***
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> (2) a description of the property by type or category;
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> (3) if the property is inventory, a description of each type of inventory and a general estimate of the quantity of each type of inventory;
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> (4) the physical location or taxable situs of the property; and
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> (5) the property owner's good faith estimate of the market value of the property or, at the option of the property owner, the historical cost when new and the year of acquisition of the property.
>
> (b) When required by the chief appraiser, a person shall render for taxation any other taxable property that he owns ***or that he manages and controls***

as a fiduciary on January 1.

(c) A person may render for taxation any property that he owns ***or that he manages and controls as a fiduciary*** on January 1, although he is not required to render it by Subsection (a) or (b) of this section.

(d) A fiduciary who renders property shall indicate his fiduciary capacity and shall state the name and address of the owner." (emphasis added).

A company that lists a piece of property on a property rendition could manage or control that property pursuant to a bailment, lease, consignment, or other contractual arrangement. Sartomer's statement that it has listed the wastewater treatment system on its property rendition does not evidence an ownership interest in that system. As such, Sartomer has not presented the Executive Director with any documentation indicating that it has an ownership interest in the wastewater treatment system at issue. Based on the information provided in the applications and Sartomer's responses to the administrative and technical NODs, the Executive Director has determined that Sartomer does not have an ownership interest in the wastewater treatment system at issue; and therefore, is not eligible to receive a positive use determination.

REPLY: Sartomer has always maintained that it has an ownership interest in the wastewater treatment system made the basis of this appeal. In that regard, any reference made to Sartomer's responses to notices of deficiency, in which it erroneously stated that Lyondell Basell is the sole owner of the property in question and that Sartomer has no property tax liability for same, is misleading. Sartomer clearly communicated to the Tax Relief for Pollution Control Property Program that this statement was made in error, which facilitated an agreement to reconsider the negative use determinations.

Further, a verbal agreement was made on November 4, 2009, at the TCEQ's main office in Austin, Texas, between Ronald Hatlett of the TCEQ's Tax Relief for Pollution Control Property Program and Ronald P. Little of Associated Tax Appraisers that the two negative use determinations made the basis of this appeal would be overturned. In that regard the Tax Relief for Pollution Control Property Program requested that Sartomer provide them with a withdrawal of its appeals, a copy of its 2009 Personal Property Tax Rendition and a document stating it was the owner of the two wastewater treatment facilities in question. Sartomer responded by providing the TCEQ a withdrawal of their appeal (contingent upon the negative use determinations being overturned), a copy of their 2009 Personal Property Tax Rendition and a letter from Charles J. Maruzzella, Comptroller of Sartomer Inc., that Sartomer is the rightful owner of the two wastewater treatment plants (CVON Wastewater-pbd and CVON Wastewater-sma) located at 8280 Sheldon Road.

In regard to the issue of ownership, please be advised that both wastewater treatment facilities are rendered by Sartomer on its Personal Property Tax Rendition and, as stated in its original appeal, the cost associated with both facilities represents Sartomer's contribution towards their construction and its ownership interest. Since the property in question constitutes personal property, there is no title or deed indicating ownership. There is, however, an implied agreement between Lyondell Basell and Sartomer that each maintains an ownership interest in the property, as confirmed by Charles J. Maruzzella, Comptroller of Sartomer Inc.

CONCLUSION

Sartomer has an ownership interest in the two wastewater facilities located at its 8280 Sheldon Road Plant and is required by law to have them in operation. The two wastewater facilities meet or exceed rules and regulations adopted by the 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 pursuant to §11.31 of Texas Tax Code. Therefore, Sartomer requests that the Executive Director's Negative Use Determination of Use Determination Application No(s). 13805 and 13806 be set aside and that a Positive Use Determination be issued in its place.

Respectfully Submitted,

Ronald P. Little
Associated Tax Appraisers
Property Tax Agents for Sartomer Inc.