

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



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

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

December 4, 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. 2009-1681-MIS-U

Dear Ms. Castañuela:

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

Sincerely,

A handwritten signature in black ink, appearing to read "Eli Martinez".

Eli Martinez, 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

TCEQ DOCKET NO. 2009-1681-MIS-U

APPEAL OF EXECUTIVE DIRECTOR'S NEGATIVE USE DETERMINATION REGARDING SARTOMER INC.'S APPLICATION NO. 13811	§ § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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**OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO APPEAL OF USE DETERMINATION**

To the honorable 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 appeal of the Executive Director's (ED) negative use determination regarding Application No. 13811 submitted by Sartomer Inc. ("Sartomer" or "Applicant").

I. Introduction

Sometime after May 15, 2009, Sartomer filed a Tier I application for use determination concerning a Sulfur removal system used in its Goodyear plant in Beaumont, Texas. On July 15, 2009, the ED issued a Notice of Deficiency (NOD) requesting further information regarding the pollution control property. In correspondence received by the Commission on July 15, 2009, Sartomer replied to the NOD by clarifying that the "product is a co-product produced at this facility. It is sold to companies that produce liquid fuels...[which] reduces SOx emissions during end use." On September 22, 2009, the ED issued a negative use determination for this equipment, citing three bases for its decision: 1. Product improvement is not pollution control. 2. There is no environmental benefit at the site. The environmental benefit occurs when the fuel is combusted. 3. There is not an adopted environmental regulation which requires this company to

remove sulfur from this co-product. For the reasons stated herein, OPIC recommends that the appeal by Sartomer be denied.

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

As stated *supra*, the ED concludes that Sartomer's project is not eligible for a positive use determination because the environmental benefit of a low sulfur fuel project occurs when the consumer uses the fuel rather than providing an environmental benefit at the site. Furthermore, the equipment listed in Sartomer's application is used for the purpose of producing a product which is designed to control air pollution, and Tax Code § 11.31(a) excludes property merely used in the manufacturing of a product that will reduce air pollution from being eligible for a positive determination.

Applicant's appeal states that the "removal of sulphur by Sartomer from their co-product lowers the amount of SOx that is emitted during the combustion of fuels that are produced from the co-product...(providing) a clear environmental benefit (that) meets or exceeds an environmental regulation."

OPIC finds that the ED has correctly analyzed Sartomer's application and supports the ED's negative use determinations. Under the applicable law, Sartomer 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). Furthermore, using the § 17.15 decision flow chart, OPIC finds, as did the ED, that without an onsite environmental benefit Sartomer'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 Sartomer'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 appeal, the Chief Clerk's file, and the application, OPIC concurs with the ED's negative use determination for Sartomer's application. OPIC finds that the ED correctly applied the relevant law, and the law dictates the negative use determination made by the ED. Therefore, OPIC respectfully recommends the Commission deny Sartomer's appeal.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

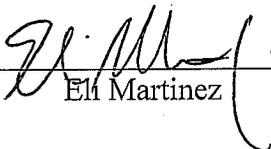
By



Eli Martinez
Assistant Public Interest Counsel
State Bar No. 24056591
P.O. Box 13087, MC 103
Austin, Texas 78711
phone: (512) 239-3974
fax: (512) 239-6377

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 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.



SARTOMER INC.
TCEQ DOCKET NO. 2009-1681-MIS-U

Associated Tax Appraisers
Attn: Ronald P. Little
4543 Post Oak Place, #232
Houston, Texas 77027
Tel: 281/497-2200 Fax: 713/627-8485

Bridget Bohac
TCEQ Office of Public Assistance MC 108
P.O. Box 13087
Austin, Texas 78711-3087
512/239-4000 FAX 512/239-4007

Sartomer Inc.
PO Box 56561
Houston, Texas 77256-6561

Kyle Lucas
TCEQ Alternative Dispute
Resolution Program MC 222
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0687 FAX 512/239-4015

Chief Appraiser
Jefferson County Appraisal District
P.O. Box 21337
Beaumont, Texas 77720

Susana M. Hildebrand, P.E.
TCEQ Air Quality Division MC 206
P.O. Box 13087
Austin, Texas 78711-3087
512/239-4900 FAX 512/239-6188

Chance Goodin
TCEQ Chief Engineer's Office MC 168
P.O. Box 13087
Austin, Texas 78711-3087
512/239-6335 FAX 512/239-6188

Minor Hibbs
TCEQ Chief Engineer's Office MC 168
P.O. Box 13087
Austin, Texas 78711-3087
512/239-1795 FAX 512/239-1794

Robert Martinez
TCEQ Environmental Law Division MC 173
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0600 FAX 512/239-0606

Docket Clerk
TCEQ Office of Chief Clerk MC 105
P.O. Box 13087
Austin, Texas 78711-3087
512/239-3300 FAX 512/239-3311