

**SARTOMER INC. GOODYEAR PLANT'S REPLY TO THE
TCEQ OFFICE OF PUBLIC INTEREST COUNSEL'S
AND THE EXECUTIVE DIRECTOR'S AND
JEEFERSON COUNTY APPRAISAL DISTRICT'S RESPONSE BRIEF**

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2009 DEC 18 PM 3:42

CHIEF CLERKS OFFICE

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: 2009-1681-MIS-U
Application No: 13811
Company Name: Sartomer Inc. Goodyear Plant
Street Address: 11455 IH 10, Beaumont, TX 77705
Appraisal District: Jefferson County

This document is Sartomer Inc. Goodyear Plant'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"), the TCEQ Executive Director's and Jefferson County Appraisal District's (hereinafter referred to as "JCAD") responses to Sartomer's appeal of Use Determination Application No. 13811.

For reasons described below, Sartomer respectfully requests that the TCEQ affirm its appeal and set aside the Executive Director's Negative Use Determination regarding Use Determination Application No. 13811.

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 a Tier 1 Application for Tax Relief for Pollution Control Property with the TCEQ, which sought a positive use determination for a

sulfur removal system located at its Sartomer Inc. Goodyear Plant at 11455 IH 10, Beaumont, Texas 77705.

On or about Jun 15, 2009, ATA was in receipt of an administrative notice 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 a notice from the TCEQ's Tax Relief for Pollution Control Property that Sartomer's application was administratively complete.

On or about July 24, 2009, ATA was in receipt of a technical notice 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 Determination for Use Determination Application No. 13811, to which it replied by timely filing an appeal 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:

“... [T]he 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 sulfur 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.”

REPLY: The supposition that “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” is incorrect. The burning of low sulfur fuel is required by 30 Tex. Admin. Code. §112.9, which states, “no person may cause, suffer, allow, or permit emissions of sulfur dioxide (SO₂) from any liquid fuel-fired steam generator, furnace, or heater to exceed 440 parts per million by volume (ppmv) at actual stack conditions and averaged over a three-hour period.” Sartomer complies with this existing regulation by simply removing the sulfur from its co-product before it can be used to produce that fuel. This give Sartomer’s co-product an inherent environmental benefit, which is created on site.

Further, in 2007, the 80th Texas Legislature passed HB 3732,

which extended the list of property eligible for a tax exemption as pollution control by adding Tex. Tax. Code. §11.31(k). This statute includes the following:

§11.31(k) The Texas Commission on Environmental Quality shall adopt rules establishing a nonexclusive list of facilities, devices, or methods for the control of air, water, or land pollution, which must include:

- (18) any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.

The sulfur removal system falls into this category as it is instrumental in the prevention of sulfur dioxide emissions from the combustion of fuels that are produced from the co-product.

REPLY TO THE TCEQ EXECUTIVE DIRECTOR'S RESPONSE BRIEF

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

- 1. The Executive Director's negative use determination should be affirmed because the sulfur removal system is not installed to "meet or exceed rules and 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." See 30 Tex. Admin. Code § 17.4(a).**

REPLY: The supposition that "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" is incorrect. The burning of low sulfur fuel is required by 30 Tex. Admin. Code. §112.9, which states, "no

person may cause, suffer, allow, or permit emissions of sulfur dioxide (SO₂) from any liquid fuel-fired steam generator, furnace, or heater to exceed 440 parts per million by volume (ppmv) at actual stack conditions and averaged over a three-hour period.” Sartomer complies with this existing regulation by simply removing the sulfur from its co-product before it can be used to produce that fuel. This give Sartomer’s co-product an inherent environmental benefit, which is created on site.

- 2. The Executive Director’s negative use determination should be affirmed because the sulfur removal system does not provide an "environmental benefit at the site" as required by 30 Tex. Admin. Code § 17.15(a).**

REPLY: Sartomer’s co-product has an inherent environmental benefit created on site, since removal of the sulfur from it co-product prevents sulfur dioxide from being into the atmosphere from the combustion of fuels produced from its co-product.

- 3. The Executive Director's negative use determination should be affirmed because the sulfur removal system is production equipment.**

REPLY: The sulfur removal system has no other purpose than to provide an environmental benefit.

- 4. The Executive Director's negative use determination should be affirmed because Sartomer's sulfur removal equipment manufactures or produces a product or provides a service that prevents, monitors, controls, or reduces air, water, or land pollution pursuant to Texas Tax Code § 11.31(a).**

REPLY: Texas Tax Code § 11.31(a) in it entirety reads as follows:

“ 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. 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. Property used for residential purposes, or for recreational, park, or scenic uses as defined by Section 23.81, is ineligible for an exemption under this section.”

The language in the subsection is not exclusive. It provides that “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.” This statement indicates that a person can be entitled to an exemption from taxation proved there are other justifying factors.

5. The Executive Director's negative use determination should be affirmed because the sulfur removal system does not meet the technical specifications of Equipment and Categories List ("ECL") item A-94.

REPLY: Issue was made of the cited Equipment and Category List (ECL) item number listed on Sartomer’s Use Determination Application during the administrative review. Sartomer’s change of the ECL from A-168 to A-94 was never challenged during the technical review.

REPLY TO JEFFERSON COUNTY APPRAISAL DISTRICT’S RESPONSE BRIEF

Jefferson County Appraisal District’s response brief to Sartomer’s appeal provides:

The Commission denied this application on September 22, 2009, noting in its ruling that the project would remove sulfur from a co-product which is then sold to others who then use the co-product to produce liquid fuels which, when burned, produce less "Sax." The commission then ruled that:

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 the company to remove sulfur from this co-product.

It is the position of the Jefferson County Appraisal District, through its Chief Appraiser, that Negative Use Determination is proper under Section 11.31 of the Property Tax Code and the rules promulgated by the TCEQ to implement that section for all of the reasons stated by the Commission in its ruling.

REPLY: The supposition that “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” is incorrect. The burning of low sulfur fuel is required by 30 Tex. Admin. Code. §112.9, which states, “no person may cause, suffer, allow, or permit emissions of sulfur dioxide (SO₂) from any liquid fuel-fired steam generator, furnace, or heater to exceed 440 parts per million by volume (ppmv) at actual stack conditions and averaged over a three-hour period.” Sartomer complies with this existing regulation by simply removing the sulfur from its co-product before it can be used to produce that fuel. This give Sartomer’s co-product an inherent environmental benefit, which is created on site.

Further, in 2007, the 80th Texas Legislature passed HB 3732, which extended the list of property eligible for a tax exemption as pollution control by adding Tex. Tax. Code. §11.31(k). This statute includes the following:

§11.31(k) The Texas Commission on Environmental Quality shall

adopt rules establishing a nonexclusive list of facilities, devices, or methods for the control of air, water, or land pollution, which must include:

- (18) any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.

The sulfur removal system falls into this category as it is instrumental in the prevention of sulfur dioxide emissions from the combustion of fuels that are produced from the co-product.

CONCLUSION

Sartomer made all good faith efforts to provide the information requested by the TCEQ's Tax Relief for Pollution Control Program. Further, Sartomer's removal of sulfur from its co-product does meet or exceed rules and regulations adopted by the environmental protection agency of the United States, Texas, and/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 no issue be heard at this time regarding incomplete or inaccurate information on its Use Determination Application No. 13811 and that the Executive Director's Negative Use Determination of said application 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. Goodyear Plant