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

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. 2009-1682-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,

Eli Martinez, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2009-1682-MIS-U

APPEAL OF EXECUTIVE DIRECTOR'S NEGATIVE USE DETERMINATION REGARDING SARTOMER INC.'S APPLICATION NO. 13814	§ § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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. 13814 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 propane line replacement used in its Goodyear plant in Beaumont, Texas. On September 22, 2009, the ED issued a negative use determination for this equipment because "replacement of deteriorating production piping is considered to be plant maintenance and not pollution control." Sartomer filed an appeal on October 12, 2009, stating that "a clear environmental benefit" is provided by replacement of the propane line, which constitutes "part of a cooling system that cools the reaction process and serves as a vent condenser, which reduces emissions to the flare." For the reasons stated herein, OPIC recommends that the appeal by Sartomer be denied.

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 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. 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

As indicated *supra*, Sartomer submitted a Tier I application concerning its propane line replacement project. Sartomer contends that the replacement lines will enable compliance with 30 TAC §17.25(a)(1), which states "No person may allow a vent gas stream containing volatile organic compounds (VOC) to be emitted from any process vent, unless the vent gas stream is controlled properly in accordance with §115.122(a)(1) of this title (relating to Control Requirements)."

Sartomer identifies item number A-112 in Part A of the ECL as the qualifying basis for the replaced equipment. The pollution control properties in item A-112 in Part A of the ECL are "Replacement of existing pumps, valves, or seals in piping service." The description of the A-112 pollution control properties is:

> The incremental cost difference between the cost of the original equipment and the replacement equipment is eligible only when the replacement of these parts is done for the sole purpose of eliminating fugitive emissions of volatile organic compounds.

Sartomer makes no specific representation that the project it has undertaken consists solely of replacing seals in its piping service. To the contrary, Sartomer's application and appeal materials only generally identify a $1,000,000 "propane line." Furthermore, Sartomer makes no specific representation that its project was undertaken for the "sole purpose" of eliminating fugitive emissions. The broad task of "propane line replacement" simply does not fall under the narrow purview of qualified property under item number A-112, which was intended to incentivize reduction of fugitive emissions. Sartomer has not provided any technical basis to conclude that fugitive emissions, as opposed to emissions that would result from standard operations or faulty equipment, will be reduced by its project. Furthermore, no legal basis is presented to conclude that the propane line is the type of pollution control equipment contemplated under item number A-112.

IV. Conclusion

Based on our review of the appeal, the Chief Clerk's file, and the application, OPIC finds that the ED has correctly analyzed Sartomer's application and supports the ED's negative use determination. Maintenance of piping used for standard operations does not qualify as replacement equipment installed for the sole purpose of eliminating fugitive emissions of volatile organic compounds and should not be considered qualifying A-112 "pollution control" equipment under the § 17.15 decision flow chart. Therefore, OPIC respectfully recommends the Commission deny Sartomer's appeal.

Respectfully submitted,

Blas J. Coy, Jr.
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By _____
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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.

_____
Eli Martinez

SARTOMER INC.
TCEQ DOCKET NO. 2009-1682-MIS-U

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