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April 5, 2010

Docket Clerk  
TCEQ Office of Chief Clerk MC 105  
12100 Park 35 Circle, Bldg. F  
Austin, Texas 78753

Re: TCEQ Docket No. 2010-0252-MIS-U; *Appeal of Executive Director's Positive Use Determination Regarding Mizuho Corporate Bank MHCBC (USA)'s Application No. 8262*; Before the Texas Commission on Environmental Quality

Dear Docket Clerk:

Enclosed please find the following document for filing in the above-referenced matter.

- MHCBC (USA) Leasing and Finance Corporation's Response to the Harris County Appraisal District's Appeal of the Executive Director's Positive Use Determination for Application No. 8262.

I have also enclosed the required seven (7) copies for the Chief Clerk. I have also enclosed an additional copy for file-stamping and return to my office in the self-addressed stamped envelope.

Thank you for your attention to this matter.

Very truly yours,

Kimberley M. Vercher  
Legal Assistant to Mark Farley

Enclosure

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2010 APR -6 AM 10:17  
CHIEF CLERKS OFFICE

cc:

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Assistant General Counsel  
P.O. Box 920975  
Houston, Texas 77292-0975

Susana M. Hildebrand, P.E.  
Chief Engineer's Office, MC 168  
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APPEAL OF EXECUTIVE  
DIRECTOR'S POSITIVE USE  
DETERMINATION REGARDING  
MIZUHO CORPORATE BANK  
MHCBS (USA)'S APPLICATION NO.  
8262

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BEFORE THE TEXAS COMMISSION  
ON ENVIRONMENTAL QUALITY  
CHIEF CLERKS OFFICE

**MHCBS (USA) LEASING & FINANCE CORPORATION'S RESPONSE TO THE  
HARRIS COUNTY APPRAISAL DISTRICT'S APPEAL OF THE EXECUTIVE  
DIRECTOR'S POSITIVE USE DETERMINATION FOR APPLICATION NO. 8262**

MHCBS (USA) Leasing & Finance Corporation ("Mizuho Corporate Bank MHCBS (USA)" or "MHCBS") files this response to the Harris County Appraisal District ("HCAD") appeal of the Executive Director's positive use determination for Application No. 8262.

For the reasons set forth below, MHCBS respectfully requests that the Texas Commission on Environmental Quality (the "Commission") deny HCAD's appeal and affirm the Executive Director's positive use determination for Application No. 8262.

**I. PROCEDURAL AND FACTUAL BACKGROUND**

**A. Use Determination for Application No. 8262**

Sunrise Chemical LLC ("Sunrise Chemical") owns and operates a facility located in Pasadena, Texas.<sup>1</sup> Sunrise Chemical manufactures ethylidene norborne ("ENB") that is used as a feedstock in the production of certain types of rubber.<sup>2</sup> Sunrise Chemical currently is a joint venture between Nisseki Chemical Texas, Inc. ("Nisseki") and Sanam Corporation ("Sanam").<sup>3</sup>

In January 2004, Sunrise Chemical sold and then leased back one of its ENB units (ENB2), including the associated pollution control equipment, to MHCBS.<sup>4</sup> Sunrise Chemical entered into this structured financial transaction to generate funds to allow Nisseki and Sanam to buy-out another original member of the joint venture.<sup>5</sup> When the agreement was executed, MHCBS became the owner of ENB2 and was therefore liable for the property taxes associated with the equipment.<sup>6</sup>

On February 2, 2005, Sunrise Chemical submitted an application to TCEQ for a use determination for the pollution control property associated with ENB2.<sup>7</sup> Sunrise Chemical

<sup>1</sup> Charney Aff. ¶ 2 (Attached as MHCBS Ex. A.).

<sup>2</sup> *Id.* at ¶ 3.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at ¶ 4.

<sup>5</sup> *Id.*

<sup>6</sup> Sunrise Chemical re-purchased ENB2 from MHCBS in January 2010. *Id.* at ¶ 9.

<sup>7</sup> See Application for Use Determination, dated February 2, 2005 (Attached as MHCBS Ex. B.).

submitted the application in its own name based upon a misunderstanding of the Texas Tax Code and TCEQ's rules.<sup>8</sup> On February 23, 2005, the Executive Director issued a 100% Use Determination for the pollution control property associated with ENB2.<sup>9</sup>

After receiving the 100% Use Determination in 2005, HCAD created a pollution control property account in Sunrise Chemicals' name, but the pollution control exemption has never been applied to offset taxes due.<sup>10</sup>

On December 2, 2009, TCEQ was asked to correct the Use Determination to reflect MHCB's ownership.<sup>11</sup> On December 3, 2009, the Executive Director reissued the Use Determination in MHCB's name.<sup>12</sup>

## **B. HCAD's Appeal**

On February 15, 2010, the Harris County Appraisal District ("HCAD") requested that the Commission reopen or reconsider the Executive Director's positive use determination for Application No. 8262.<sup>13</sup>

First, HCAD argues that MHCB is not eligible for the pollution control property exemption because another entity (*i.e.*, Sunrise Chemical) operated the pollution control equipment.<sup>14</sup> Such an interpretation is not supported by a reading of the plain language of the statutory provision which provides the exemption.<sup>15</sup> *See* § II.A, *infra*.

HCAD also asserts that MHCB's situation is analogous to the situation of Sartomer, Inc. ("Sartomer") that resulted in the Commission affirming the Executive Director's issuance of a negative use determination for Application No. 13805.<sup>16</sup> MHCB's situation, however, is clearly distinguishable from Sartomer's situation. *See* § II.A, *infra*.

Second, HCAD argues that MHCB is ineligible for the pollution control property exemption because it was providing "services" to Sunrise Chemical.<sup>17</sup> This argument has no factual support. There simply is no basis to assert that MHCB was providing services to Sunrise Chemical. *See* § II.B, *infra*.

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<sup>8</sup> Charney Aff. ¶ 6 (Attached as MHCB Ex. A.).

<sup>9</sup> *See* Use Determination, dated February 23, 2005 (Attached as MHCB Ex. C).

<sup>10</sup> Charney Aff. ¶ 7 (Attached as MHCB Ex. A.).

<sup>11</sup> *See* Reissued Use Determination and Transmittal Letter, dated December 3, 2009 (Attached as MHCB Ex. D).

<sup>12</sup> *Id.*

<sup>13</sup> *See* Letter from Ryan T. Miller, Assistant General Counsel, Office of General Counsel, Harris County Appraisal District, to LaDonna Castanuela, Chief Clerk, Texas Commission on Environmental Quality (Feb. 15, 2010) (Attached as MHCB Ex. E).

<sup>14</sup> *Id.*

<sup>15</sup> *See* TEX. TAX CODE § 11.31(a).

<sup>16</sup> *See* Letter from Ryan T. Miller, Assistant General Counsel, Office of General Counsel, Harris County Appraisal District, to LaDonna Castanuela, Chief Clerk, Texas Commission on Environmental Quality (Feb. 15, 2010) (Attached as MHCB Ex. E).

<sup>17</sup> *Id.*

## II. MHCB IS ENTITLED TO THE POSITIVE USE DETERMINATION

The Executive Director correctly found that MHCB is entitled to a positive use determination for Application No. 8262. MHCB met all of requirements contained in both Section 11.31(a) of the Texas Tax Code which provides the exemption and TCEQ's implementing rules. Furthermore, the exclusion for "services" in the statute does not apply to MHCB.

### A. Nothing In the Texas Tax Code or TCEQ's Rules Require that MHCB Use the Pollution Control Property Themselves

HCAD's assertion that MHCB is not eligible for the exemption because another entity (*i.e.*, Sunrise Chemical) operated the pollution control equipment is not supported by a reading of the plain language of the statutory provision which provides in part, "[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."<sup>18</sup> Statutory words and phrases must be "read in context and construed according to the rules of grammar and common usage."<sup>19</sup> The statute's use of both the active and the passive voice makes clear that the exemption is available to the owner of the pollution control equipment so long as the equipment "is used" for pollution control purposes.<sup>20</sup> It does not matter who uses the equipment.<sup>21</sup> If the legislature had intended for the exemption to be available only if the same entity owned and operated the equipment, the statutory provision would have been written only in the active voice (*e.g.* that the person owns and uses. . .).

HCAD's suggestion that MHCB's situation is analogous to the situation of Sartomer that resulted in the Commission affirming the Executive Director's issuance of a negative use determination for Application No. 13805 also is not supportable. MHCB's situation is clearly distinguishable from Sartomer's situation. Unlike Sartomer, MHCB owned **both** the chemical manufacturing process equipment and the associated pollution control equipment.<sup>22</sup> In Sartomer, the company was attempting to obtain the tax exemption for pollution control equipment that was owned by another entity (*i.e.*, Lyondell).<sup>23</sup>

### B. MHCB Is Not Providing a Service to Sunrise Chemical

There is no factual basis for HCAD's assertion that MHCB is ineligible for the exemption because it was providing "services" to Sunrise Chemical. The relevant statutory exclusion provides as follows: "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**

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<sup>18</sup> TEX. TAX CODE § 11.31(a) (emphasis added).

<sup>19</sup> TEX. GOV'T CODE § 311.011(a).

<sup>20</sup> TEX. TAX CODE § 11.31(a)

<sup>21</sup> *See id.*

<sup>22</sup> *See* Charney Aff. ¶ 4 (Attached as MHCB Ex. A.).

<sup>23</sup> *See, e.g.*, Executive Dir.'s Response to Sartomer Inc.'s Appeal of the Executive Dir.'s Negative Use Determination, Appeal of the Executive Dir.'s Negative Use Determinations Issued to Sartomer Inc. Application Nos. 13805 & 13806, TCEQ Docket Nos. 2009-1679-MIS-U & 2009-1680-MIS-U (Attached as MHCB Ex. F.).

prevents, monitors, controls, or reduces air, water, or land pollution.<sup>24</sup> For this exclusion to apply, MHCB would have had to provide a “service” that “prevents, monitors, controls, or reduces air, water, or land pollution,” which it did not.

The pollution control property at issue was the subject of a Master Equipment Lease between MHCB and Sunrise Chemical.<sup>25</sup> The Master Equipment Lease was a lease under the Uniform Commercial Code (“UCC”), Chapter 2A-Leases. Article 2A is intended to codify “the law with respect to leases of goods.”<sup>26</sup> Importantly, the UCC only governs contracts related to the sale or leasing of goods, not contracts for services.<sup>27</sup>

Accordingly, there simply is no basis to assert that the lease between MHCB and Sunrise Chemical represented a contract for services. MHCB did not operate the equipment.<sup>28</sup> It did not inspect the equipment.<sup>29</sup> It did not maintain the equipment.<sup>30</sup> It performed no services.<sup>31</sup> The transaction between MHCB and Sunrise simply related to the lease of goods.

Furthermore, there is no basis to assert that the lease between MHCB and Sunrise Chemical represented a contract for a “service that prevents, monitors, controls, or reduces air, water, or land pollution.” The lease was merely a structured financial transaction used to generate funds.

Instead, as outlined in TCEQ’s guidance document regarding the pollution control property exemption, the exclusion cited by HCAD is intended to cover situations where an entity is operating pollution control equipment and then contracts with other parties to manage their waste streams (e.g., a commercial hazardous waste incinerator or a waste water treatment plant).<sup>32</sup> Those situations are quite different from MHCB’s situation where an entity conveys a legal interest to another party to have possession and use of fixed equipment that comprise a chemical manufacturing process unit as part of a structured financial transaction. Unlike the examples in TCEQ’s guidance document, MHCB is not in the business of providing pollution control services or leasing pollution control equipment.

Lastly, the clear intent of the statute is to provide tax incentives to companies required by environmental regulations to make large investments in pollution control equipment in Texas.<sup>33</sup> Sunrise Chemical is the classic example of such a company. It would not be equitable to Sunrise Chemical to deny MHCB the pollution control property exemption. According to the terms of

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<sup>24</sup> TEX. TAX CODE § 11.31(a) (emphasis added).

<sup>25</sup> See Charney Aff. ¶ 4 (Attached as MHCB Ex. A.).

<sup>26</sup> See TEX. BUS. AND COM. CODE § 2A.101 cmt. (emphasis added).

<sup>27</sup> See *id.*

<sup>28</sup> See Charney Aff. ¶ 5 (Attached as MHCB Ex. A.).

<sup>29</sup> See *id.*

<sup>30</sup> See *id.*

<sup>31</sup> See *id.*

<sup>32</sup> See TEX. COMM’N ON ENV’T CONTROL, PROPERTY-TAX EXEMPTIONS FOR POLLUTION CONTROL PROPERTY, DRAFT RG 461 (2009).

<sup>33</sup> HOUSE COMM. ON WAYS AND MEANS, BILL ANALYSIS, Tex. H.B. 1920, 73rd Leg., R.S. (1993).

the Master Equipment Lease, Sunrise Chemical indemnified MHCB for property taxes.<sup>34</sup> Sunrise Chemical should not be denied the benefit of the pollution control equipment exemption merely because it chose to enter into a structured financial transaction with MHCB.

### III. CONCLUSION

For the aforementioned reasons, MHCB is entitled to the pollution control property exemption provided by Section 11.31 of the Texas Tax Code. Accordingly, MHCB respectfully requests that the Commission deny HCAD's appeal and affirm the Executive Director's positive use determination for Application No. 8262.

Respectfully submitted,

*Mark L. Farley* *by permission*  
*Z.M.*

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Facsimile: 281.582.7807

Attorney for MHCB (USA) Leasing &  
Finance Corporation

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<sup>34</sup> See Charney Aff. ¶ 5 (Attached as MHCB Ex. A.).

CERTIFICATE OF SERVICE

I certify that on 4/5, 2010, MHCB (USA) Leasing & Finance Corporation's Response to Harris County Appraisal District's Appeal of the Executive Director's Positive Use Determination for Application No. 8262 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a complete copy was transmitted by certified mail, return receipt requested or electronic mail to all persons on the attached mailing list.

*Mark L. Farley / by permission  
MLF*

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TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2010 APR - 6 AM 10:19  
CHIEF CLERKS OFFICE

**EXHIBIT "A"**  
**CHARNEY AFFIDAVIT**

**TCEQ DOCKET No. 2010-02520MIS-U**

<b>APPEAL OF EXECUTIVE</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
<b>DIRECTOR'S POSITIVE USE</b>	<b>§</b>	<b>COMMISSION ON</b>
<b>DETERMINATION REGARDING</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
<b>MIZUHO CORPORATE BANK</b>	<b>§</b>	
<b>MHCB (USA)'S APPLICATION</b>	<b>§</b>	
<b>NO. 8262</b>	<b>§</b>	

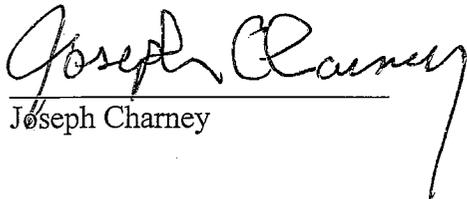
**AFFIDAVIT OF JOSEPH CHARNEY**

Joseph Charney, being duly sworn, deposes and states:

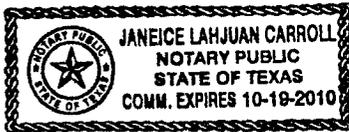
1. My name is Joseph Charney. I am over 18 years of age. I am fully competent to make this affidavit and I have personal knowledge of the facts stated in the affidavit. To my knowledge, all of the facts stated in this affidavit are true and correct.
2. I have been employed since April 1, 2002 at the facility in Pasadena, Texas that is now owned by Sunrise Chemical LLC (the "Sunrise Chemical facility"). During that time, I have been employed by Nisseki Chemical Texas Inc. ("Nisseki"). Currently, I am the Senior Manager-Administration and Procurement for Nisseki.
3. Sunrise Chemical currently is a joint venture between Nisseki and Sanam Corporation ("Sanam"). Sunrise Chemical manufactures ethylidene norborne ("ENB") that is used as a feedstock in the production of certain types of rubber.
4. In January 2004, Sunrise Chemical entered into a Master Equipment Lease with MHCB (USA) Leasing & Finance Corporation ("MHCB") whereby it sold and then leased back one of its ENB units (ENB2), including the associated pollution-control equipment, to MHCB. Sunrise Chemical entered into this structured financial transaction to generate funds to allow Nisseki and Sanam to buy-out another original member of the joint venture.
5. MHCB never operated, inspected, or maintained ENB2. Under the terms of the Master Equipment Lease, Sunrise Chemical remained financially responsible for the property taxes associated with ENB2.
6. On February 2, 2005, Sunrise Chemical submitted an application to the Texas Commission on Environmental Quality ("TCEQ") for a use determination for the pollution-control property associated with ENB2. Sunrise Chemical submitted the application in its own name based upon a misunderstanding of the Texas Tax Code and TCEQ's rules.
7. On February 23, 2005, the Executive Director issued a 100% Use Determination for the pollution-control property associated with ENB2 in Sunrise Chemicals' name. After receiving the 100% Use Determination in 2005, the Harris County Appraisal District created a pollution-control property account in Sunrise Chemicals' name, but the pollution-control exemption has never been applied to offset taxes due.

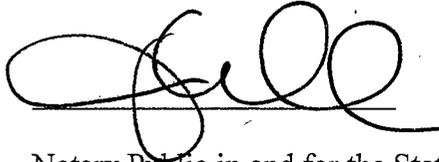
8. On December 2, 2009, I spoke with Ron Hatlett in TCEQ's Tax Relief Program and requested that the Use Determination be corrected to reflect MHCB's ownership. On December 3, 2009, the Executive Director reissued the Use Determination in MHCB's name.
9. In January 2010, Sunrise Chemical re-purchased ENB2 from MHCB.

I signed this affidavit on 4/5/10.

  
Joseph Charney

SUBSCRIBED AND SWORN TO BEFORE ME on Monday April 5, 2010





Notary Public in and for the State of Texas.  
My commission expires on 10/19/2010.

**EXHIBIT "B"**

**APPLICATION FOR USE DETERMINATION,**

**DATED FEBRUARY 2, 2005**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
APPLICATION FOR USE DETERMINATION  
FOR POLLUTION CONTROL PROPERTY

The Texas Commission on Environmental Quality (TCEQ) has the responsibility to determine whether a property is a pollution control property. A person or political subdivision seeking a use determination for pollution control property must complete the attached application or use a copy or similar reproduction. For assistance in completing this form refer to the TCEQ guidelines document, *Property Tax Exemptions for Pollution Control Property*, as well as 30 TAC §17, rules governing this program. For additional assistance please contact the TCEQ Tax Relief for Pollution Control Property Program at 512/239-6348. The application should be completed and mailed, with the appropriate fee, to: TCEQ MC-214, Cashiers Office, P.O. Box 13088, Austin, Texas, 78711-3088.

**1. GENERAL INFORMATION**

A. What is the type of ownership of this facility?

- Corporation                       Sole Proprietor  
 Partnership                       Utility  
 Limited Partnership     Other \_\_\_\_\_

B. Size of company: Number of Employees

- 1 to 99  
 100 to 499  
 500 to 999  
 1,000 to 1,999  
 2,000 or more

C. Business Description: (Provide a brief description of the type of business or activity at the facility)

Nisseki is a chemical manufacturing facility which produces specialty chemical intermediates. Primary products are synthetic aromatic solvents and also a monomer used by others in the manufacture of EPDM rubber.

**2. TYPE OF APPLICATION**

A.  Tier I \$150 Application Fee.

If all property listed in Section 8 of this application is on the predetermined equipment list (PEL) or is necessary for the installation or operation of equipment on the list, then check this box.

B.  Tier II \$1,000 Application Fee

If any property listed in Section 8 is not on the PEL, and all of this property is used 100% for pollution control, then check this box.

C.  Tier III \$2,500 Application Fee

If any property listed in Section 8 is not on the PEL and if a partial use determination is being requested for ANY of the property included in the application, then check this box.

*NOTE: Enclose a check or money order to the TCEQ along with the application to cover the required fee.*

**3. NAME OF APPLICANT**

- A. Company Name: \_\_\_\_\_ Sunrise Chemical, LLC  
B. Mailing Address (Street or P.O. Box): \_\_\_\_\_ 10500 Bay Area Blvd.  
C. City, State, ZIP: \_\_\_\_\_ Pasadena, TX 77507

**4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION**

- A. Name of Facility or Unit: \_\_\_\_\_ Bayport Facility  
B. Type of Mfg. Process or Service: \_\_\_\_\_ Chemical Manufacturing

C. Street Address: 10500 Bay Area Blvd.

D. City, State, ZIP: Pasadena, TX 77507

E. Tracking Number Assigned by Applicant (Optional): \_\_\_\_\_

**5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY**

A. Name of Appraisal District: Harris County

**6. CONTACT NAME (must be provided)**

A. Company/Organization Name: Nisseki Chemical Texas Inc.

B. Name of Individual to Contact: R.B. Herrscher

C. Mailing Address: 10500 Bay Area Blvd.

D. City, State, ZIP: Pasadena, TX 77507

E. Telephone number and fax number: 713.754.1011 Fax: 713.754.1001

F. E-Mail address (if available): rherrscher@nissekichem.com

**7. RELEVANT RULE, REGULATION, OR STATUTORY PROVISION**

For each of the pollution control properties listed on this application, select the type of medium or media (air, water, waste) for which the property or device is required. Use the second column to cite the specific environmental rule, regulation, and/or law that is being met or exceeded by the installation of this property. The citation should be specific and should include the section and/or subsection of the rule, regulation, and/or law. Do not list permit numbers or registration numbers in this table. If the property or equipment was installed or constructed in response to an agreed order, do not list the order — list the rule, regulation, or law that requires the installation or construction of the property.

MEDIUM	RULE/REGULATION/LAW
Air	40 CFR 60 40 CFR 60.18 40 CFR 61.240 30 TAC 111.11 30 TAC 115.352 30 TAC 117.201 30 TAC 117.206
Water	40 CFR 122 30 TAC 26 30 TAC 309
Waste	

**8. DESCRIPTION OF PROPERTY (Complete for all applications)**

**10. PARTIAL PERCENTAGE CALCULATION**

This section is to be completed only for Tier III applications. Process changes or construction of new process equipment that results in pollution control may result in a partial determination. On one or more separate sheets of paper, explain how the partial percentage was determined using the Cost Analysis Procedure that is described in the attached *Instructions for Completing Application Form*. Include financial data that demonstrates how this percentage was calculated. Provide as detailed information as possible, since the information provided will be used by the TCEQ to evaluate the use percentage requested in the application. Attach sketches and/or flow diagrams showing the property and its function. Examples of partial determinations are shown in Appendix C of the technical guidance document.

**11. PROPERTY CATEGORIES AND COSTS**

Identify the category and the estimated purchase cost of the property listed in Section 8. List each piece of property for which a use determination is being sought. If the application is for property that is listed on the predetermined equipment list, list the appropriate item number(s) in the PEL column. Place an "N" in the second column to certify that the property was not taxable on or before January 1, 1994. Failure to answer this question for each piece of property will result in the issuance of a notice of deficiency letter and the possible rejection of the application. List the which box. (7, 9, or 10), was the final destination of each piece of property. List the estimated or actual purchase cost of the property. If the property is not wholly used for the purpose of pollution control, list the estimated percentage of pollution control calculated using the Partial Determination Cost Analysis Procedure.

Included in Description of Property Spreadsheet

Property	Property Taxable on or Before 1/10/94	Decision Flow Chart Box 7, 8, or 10	PEL Number	Estimated Purchase Cost	Partial Percentage
Land					
Property					
Totals					

**12. EMISSION REDUCTION INCENTIVE GRANT**

Will an application for an Emission Reduction Incentive Grant be filed for this property/project:

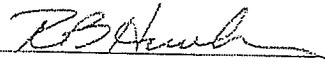
Yes  No

**13. APPLICATION DEFICIENCIES**

After an initial review of the application, the TCEQ may determine that the information provided with the application is not sufficient to make a use determination. The TCEQ may send a notice of deficiency, requesting additional information that must be provided within 30 days of the written notice.

**14. FORMAL REQUEST FOR SIGNATURE**

By signing this application, you certify that this information is true to the best of your knowledge and belief.

NAME: R.B. Herrscher  DATE: 2/2/2005  
 TITLE: Vice President

Under Texas Penal Code, Section 37.10, if you make a false statement on this application, you could receive a jail term of up to one year and a fine up to \$2,000, or a prison term of two to 10 years and a fine of up to \$5,000.

Total \$ 9,745,111.81

Tier I								
PEL No.	Media	Equipment	Rule / Regulation / Law	Description	Flow Chart Destination	Property Taxable on or Before 1/10/94	Percent	Cost
A-14	Air	Flare	40 CFR 60.18 / 30 TAC 111.111	119' Flare Stack System 2S-501 including the 3 pilot burners and two lips used for >88% destruction of air contaminants in the ENB Unit vent gas streams	7	No	100%	\$ 1,587,089
A-31	Air	Fugitive Emissions Monitors	40 CFR 61.240 / 30 TAC 115.352	Six infrared instruments strategically located in the unit to monitor for leaking components	7	No	100%	\$ 23,748
A-33	Air	Monitoring Equipment on Final Control Devices	40 CFR 60.18 / 30 TAC 111.111	Calorimeter installed to meet 300 btu/scf requirement	7	No	100%	\$ 230,668
A-58	Air	Low-NOx Burners	30 TAC 117.206	Burner on 800 hp low pressure boiler 2F-501 was replaced with new low-NOx type to reduce NOx emissions and three Low-NOx burners were also installed on furnace 2F-501	7	No	100%	\$ 59,000
A-75	Air	Welding of Pipe Joints in VOC Service	40 CFR 61.240 / 30 TAC 115.352	All VOC piping systems are welded connections except for those that require a threaded connection for an instrument tie-in	7	No	100%	\$ 1,403,991
A-90	Air	Hoods and Collection Systems for Final Control Devices	40 CFR 60 Subparts Kb VV NNN RRR / 30 TAC 117.201	Vacuum pump system, refrigeration system and vapor recovery piping leading to final control device for all process units to reduce emissions	7	No	100%	\$ 1,467,766
A-91	Air	Stacks	40 CFR 60 Dc / 30 TAC 117.201	Stack on boilers 2F-501 and 2F-502 and on furnace 2F-101	7	No	100%	\$ 24,084
W-57	Wastewater	Conveyances, Pumps, Sumps, Tanks, Basins	40 CFR 122 / 30 TAC 26	Complete concrete containment system, underground piping system, sump and pumps to segregate and convey contaminated water from uncontaminated storm water	7	No	100%	\$ 706,014
W-59	Wastewater	Wastewater Treatment Facility	30 TAC 309	Water treatment area of 300 section includes, 2D-304, 2D-322, 2D-323, 2D-324, 2D-325 and associated agitators, pumps, piping and instruments	7	No	100%	\$ 849,590
W-65	Wastewater	Containment Systems	40 CFR 122 / 30 TAC 26	Complete concrete containment system around all process facilities to contain rainfall storm water	7	No	100%	\$ 594,864
W-66	Wastewater	Wastewater Impoundments	40 CFR 122 / 30 TAC 26	Pond and ditch channel system for on-site and off-site rainfall storage	7	No	100%	\$ 910,818
S-4	Land / Water / Air	Monitoring & Control Equipment	40 CFR 60.18 / 30 TAC 111.111	Instrumentation throughout the facility for controlling flows, levels, temperatures and pressures	7	No	100%	\$ 1,650,299
M-7	Water	Potable Water Systems	30 TAC 290	Piping and systems for conveyance of potable water throughout the facility	7	No	100%	\$ 127,080

SUNRISE CHEMICAL, LLC.

1273

02/05	2/2/05	150.00	150.00
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2/05	1273	TCEQ MC-214	\$150.00
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SUNRISE CHEMICAL, LLC.  
 (281) 474-2030 TEL.  
 (281) 474-3070 FAX  
 10500 BAY AREA BLVD.  
 PASADENA, TX 77507

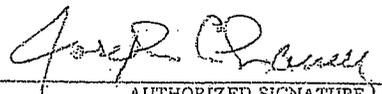
JP MORGAN CHASE BANK  
 HOUSTON, TX 77002  
 32-115/1110

1273

1273	Feb 2, 2005	*****\$150.00
CHECK NO.	DATE	AMOUNT

C & Hundred Fifty and 00/100 Dollars

BY  
 ORDER OF: TCEQ MC-214  
 CASHIERS OFFICE  
 PO BOX 13088  
 AUSTIN, TX 78711-3088



AUTHORIZED SIGNATURE

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

⑈001273⑈ ⑆111001150⑆ ⑈00103423449⑈

Flare

\$ 1,597,088.99

P.O.	Vendor	P.O. Value	Percentage of P.O. attributable to this item	Assigned Value	Description
23021	Zeeco	\$ 232,058.33	100%	\$ 232,058.33	Flare System including stack, burner tip, burner management system, knock-out drums
23111	Ref-Chem	\$ 348,544.00	10%	\$ 34,854.40	Flare System Erection
23108	Deer Park	\$ 18,142.00	100%	\$ 18,142.00	Flare System Foundations
	ECL / KBR	\$ 4,209,830.12	5%	\$ 210,491.51	Flare System Engineering
23036	Jeslex	\$ 51,017.90	100%	\$ 51,017.90	Flare Pipe Rack
23050	Jeslex	\$ 750,382.66	10%	\$ 75,038.27	Main Pipe Rack to Flare
	NCTI	\$ 1,970,946.00	5%	\$ 98,547.30	Construction Management - Flare Portion
23126	Tepsco	\$ 6,527,217.33	5%	\$ 326,360.87	Piping - Flare Portion
23004	Performance	\$ 51,750.00	100%	\$ 51,750.00	Flare Blowdown Drum
23113	Hi-Tech	\$ 1,981,313.69	5%	\$ 99,065.68	Flare Blowdown System Instrumentation
23023	Yokogawa	\$ 563,351.76	5%	\$ 28,168.09	Flare Monitoring & Control
23111	Ref-Chem	\$ 650,911.00	10%	\$ 65,091.10	Main Pipe Rack to Flare Erection
23116	Tepsco	\$ 79,698.86	50%	\$ 39,849.43	Flare Pipe Rack Erection
23022	Wholesale Elec.	\$ 482,606.00	2%	\$ 9,652.12	Motor starter systems
23102	Furlow	\$ 257,002.00	100%	\$ 257,002.00	Flare System relocation









Vacuum & Vapor Recov. \$ 1,467,766.12

P.O.	Vendor	P.O. Value	Percentage of P.O. attributable to this item	Assigned Value	Description
23015	Busch	\$ 92,038.22	100%	\$ 92,038.22	Vacuum System
	NCTI	\$ 1,970,946.00	5%	\$ 98,547.30	Construction Management - Vacuum & Vapor Recovery
23126	Tepsco	\$ 6,527,217.33	5%	\$ 326,360.87	Piping - Vacuum & Vapor Recover
23113	Hi-Tech	\$ 1,981,313.69	5%	\$ 99,065.68	Vacuum & Vapor Recovery Instrumentation
23023	Yokogawa	\$ 563,361.76	3%	\$ 16,900.85	Vacuum & Vapor Recover Monitoring & Control
23022	Wholesale Elec.	\$ 482,606.00	2%	\$ 9,652.12	Motor starter systems
	ECI / KBR	\$ 4,209,830.12	5%	\$ 210,491.51	Engineering for vacuum & vaport recovery
23003	York	\$ 421,292.67	100%	\$ 421,292.67	Refrigeration System
23055	Ward Tank	\$ 39,305.00	100%	\$ 39,305.00	2CT-101, 2CT-202, 2CT-203, 2CT-401, 2CT-402 Vapor Cold Traps
23040	Heat Transfer Eq.	\$ 65,145.00	100%	\$ 65,145.00	BD Vent Exchanger
23041	Southern Heat	\$ 16,576.00	100%	\$ 16,576.00	2CT-201, 2CT-403 Vapor Cold Traps
23022	Wholesale Elec.	\$ 482,606.00	15%	\$ 72,390.90	Motor starter systems



Wastewater conveyance \$ 706,013.64

P.O.	Vendor	P.O. Value	Percentage of P.O. attributable to this item	Assigned Value	Description
23103	USA	\$ 441,395.00	100%	\$ 441,395.00	Two underground wastewater piping systems and wastewater sump
	NCTI	\$ 1,970,946.00	2%	\$ 39,418.92	Construction Management - Water Conveyance Systems
23034	Floway	\$ 18,053.00	100%	\$ 18,053.00	Wastewater pumps
23111	Ref-Chem			\$ 36,106.00	Installation of wastewater pumps @ 2X capital cost
23119	Deer Park	\$ 70,574.00	100%	\$ 70,574.00	Underground wastewater discharge pipeline
14007	Megator	\$ 2,206.00	100%	\$ 2,206.00	Skimmer system installed in sump
	NCTI			\$ 4,412.00	Installation of skimmer system @ 2X capital cost
23022	Wholesale Elec.	\$ 482,606.00	2%	\$ 9,652.12	Motor starter systems
	ECI / KBR	\$ 4,209,830.12	2%	\$ 84,196.60	Water conveyance engineering
				\$ -	
				\$ -	
				\$ -	
				\$ -	

# Wastewater Treatment \$ 849,690.18

P.O.	Vendor	P.O. Value	Percentage of P.O. attributable to this item	Assigned Value	Description
23004	Proformance	\$ 161,975.00	100%	\$ 161,975.00	2D-304, 2D-322, 2D-323, 2D-324
23017	Southwest Tank	\$ 40,725.00	100%	\$ 40,725.00	2D-325
23126	Tepsco	\$ 6,527,217.33	4%	\$ 261,088.69	Piping - Wastewater Treatment Section
23113	Hi-Tech	\$ 1,981,313.69	4%	\$ 79,252.55	Wastewater treatment section instrumentation
23023	Yokogawa	\$ 563,361.76	4%	\$ 22,534.47	Wastewater treatment area Monitoring & Control
23111	Ref-Chem	\$ 1,051,468.12	4%	\$ 42,058.72	Erection of wastewater treatment area
	NCTI	\$ 1,970,946.00	4%	\$ 78,637.84	Construction Management - Waste Water Treatment section
23005	Philadelphia	\$ 42,699.00	100%	\$ 42,699.00	Agitators for waste water treatment section
23010	Sundyne	\$ 12,192.00	100%	\$ 12,192.00	Pumps for wastewater treatment section
23022	Wholesale Elec.	\$ 482,606.00	5%	\$ 24,130.30	Motor starter systems
	ECI / KBR	\$ 4,209,830.12	2%	\$ 84,196.60	Wastewater treatment engineering
				\$ -	
				\$ -	









**EXHIBIT "C"**

**USE DETERMINATION,**

**DATED FEBRUARY 23, 2005**

Kathleen Hartnett White, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
Larry R. Soward, *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

# USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 04-8262, filed by:

SUNRISE CHEMICAL LLC  
SUNRISE CHEMICAL BAYPORT FACILITY  
10500 BAY AREA BLVD  
PASADENA TX 77507

The pollution control property/project listed in the Use Determination Application is:

The following items: Flare; Monitoring Equipment on control devices; Fugitive Emission Monitors; Low NOx Burners; Welded Pipe Joints; Hoods & Collection Systems; Stacks; Conveyances, Pumps, Sumps, Tanks, & Basins; Waste Water Treatment Facility; Storm Water Containment; Waste Water Impoundments; Monitoring & Control Equipment; and Potable Water Systems.

The outcome of the review is:

A positive use determination of 100% for the Flare; Monitoring Equipment on control devices; Fugitive Emission Monitors; Low NOx Burners; Welded Pipe Joints; Hoods & Collection Systems; Stacks; Conveyances, Pumps, Sumps, Tanks, & Basins; Waste Water Treatment Facility; Storm Water Containment; Waste Water Impoundments; Monitoring & Control Equipment; and Potable Water Systems as detailed in the property description.

This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A handwritten signature in black ink, appearing to read "Glenn Shankle".

Executive Director

2/23/2005

Date

**EXHIBIT "D"**

**REISSUED USE DETERMINATION AND  
TRANSMITTAL LETTER,  
DATED DECEMBER 3, 2009**

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

December 3, 2009

NISSEKI CHEMICAL  
Joe Charney  
10500 BAY AREA BLVD  
PASADENA TX 77507

In response to your December 2, 2009 request we have changed the company name on the Use Determination issued for application 8262. The original use determination was issued on February 23, 2005. The new company name on the use determination is:

Mizuho Corporate Bank MHC (USA)  
Sunrise Chemical Bayport Facility  
10500 Bay Area Blvd  
Pasadena TX 77507

The new use determination is included with this letter.

If you have any questions or require any additional information, please contact the Tax Relief for Pollution Control Property Program at (512) 239-6348.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Hatlett".

Ron Hatlett  
Tax Relief Program  
Chief Engineer's Office

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

### USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application 8262 filed by:

Mizuho Corporate Bank MHC (USA)  
SUNRISE CHEMICAL BAYPORT FACILITY  
10500 BAY AREA BLVD  
PASADENA TX 77507

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The following items: Flare; Monitoring Equipment on control devices; Fugitive Emission Monitors; Low NOx Burners; Welded Pipe Joints; Hoods & Collection Systems; Stacks; Conveyances, Pumps, Sumps, Tanks, & Basins; Waste Water Treatment Facility; Storm Water Containment; Waste Water Impoundments; Monitoring & Control Equipment; and Potable Water Systems.

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This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A handwritten signature in black ink, appearing to read "Mark R. Vickery".

\_\_\_\_\_  
Executive Director

02/23/2005

\_\_\_\_\_  
Date

**EXHIBIT "E"**

**LETTER FROM RYAN T. MILLER, ATTORNEY  
GENERAL COUNSEL, OFFICE OF GENERAL  
COUNSEL, HARRIS COUNTY APPRAISAL DISTRICT,  
TO LADONNA CASTANUELA, CHIEF CLERK, TCEQ,**

**DATED FEBRUARY 15, 2010**



# Harris County Appraisal District

13013 Northwest Freeway  
Houston TX 77040  
Telephone: (713) 812-5800

P.O. Box 920975  
Houston TX 77292-0975  
Information Center: (713) 957-7800

## Office of General Counsel

February 15, 2010

*Via Certified Mail, RRR No. 7008 1140 0003 1200 2230*

Ms. LaDonna Castanuela, Chief Clerk  
Texas Commission on Environmental Quality  
12100 Park 35 Circle, MC105  
Austin, Texas 78753

Re: Application No. 8262  
Company Name: Mizuho Corporate Bank MHC B (USA)  
Street Address: 10500 Bay Area Blvd  
Pasadena, TX 77507  
Appraisal District: Harris County Appraisal District  
Type: Appeal of Positive Use Determination

### Board of Directors

Glenn E. Peters, *Chair*  
Lawrence Marshall, *Secretary*  
Ed Heathcott  
Gary W. Stein  
Toni Trumbull  
Leo Vasquez

### Chief Appraiser

Jim Robinson  
*Chief Deputy & General Counsel*  
Sands L. Stiefer

### Assistant Chief Appraisers

Guy Griscom  
Teresa S. Terry  
Glenn Traylor  
*Director of Information & Assistance*  
Roland Allinger  
*Taxpayer Liaison Officer*  
Peggy Mason

Dear Ms. Castanuela:

Pursuant to 30 Texas Administrative Code 17.25(a)(1), please allow this letter to serve as our formal appeal of the positive use determination regarding application no. 8262. In summary, the Harris County Appraisal District ("HCAD") never received information about the initial application or a copy of the positive use determination from the Executive Director of the Texas Commission on Environmental Quality ("TCEQ"). However, for your convenience, we are enclosing a copy of the positive use determination, which was obtained unofficially from the applicant. There is no copy of the application enclosed because none was provided, either from the Executive Director or the applicant.

HCAD requests that the Commission reopen or reconsider the use determination of Application No. 8262.

The basis for the appeal is that the current owner, Mizuho Corporate Bank MHC B (USA), is a leasing company and does not utilize the production control property at its facility. Rather, Mizuho Corporate Bank MHC B (USA) leases the property back to the original owner, Sunrise Chemical Bayport Facility for use in its (Sunrise's) plant. HCAD believes that a 100% positive use determination under these circumstances is contrary to current and longstanding TCEQ rules and regulations. An example of the Executive Director issuing a negative use determination in a case with substantially similar circumstances is Application No. 13805.

HCAD did not receive the information required by Texas Property Tax Code Section 11.31(d) from the Executive Director about the initial application for change of name on Application No. 8262.

February 15, 2010

Letter to Chief Clerk of TCEQ re: Appeal of Application No. 8262

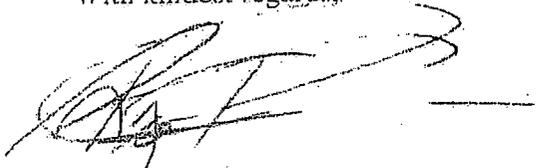
Page 2 of 2

Additionally, HCAD did not receive a copy of the use determination on Application No. 8262 from the Executive Director pursuant to Texas Property Tax Code Section 11.31(d).

For the foregoing reasons, HCAD believes that Texas Property Tax Code Section 11.31(e) is inapplicable. As an equitable measure, the extension for appealing the Executive Director's decision should be extended beyond the 20 day window prescribed by Texas Property Tax Code Section 11.31(e).

HCAD appreciates your cooperation in this regard, and on behalf of HCAD I look forward to hearing from you regarding this matter.

With kindest regards,



Ryan T. Miller  
Assistant General Counsel  
Office of General Counsel  
Harris County Appraisal District  
P.O. Box 920975  
Houston, TX 77292-0975  
Tel: (713) 957-5284  
Fax: (713) 957-5219

Cc: Nisseki Chemical  
Joe Charney  
10500 Bay Area Blvd  
Pasadena, TX 77507

*Via Certified Mail, RRR No. 7008 1140 0003 1200 2247*

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

December 3, 2009

NISSEKI CHEMICAL  
Joe Charney  
10500 BAY AREA BLVD  
PASADENA TX 77507

In response to your December 2, 2009 request we have changed the company name on the Use Determination issued for application 8262. The original use determination was issued on February 23, 2005. The new company name on the use determination is:

Mizuho Corporate Bank MHCB (USA)  
Sunrise Chemical Bayport Facility  
10500 Bay Area Blvd  
Pasadena TX 77507

The new use determination is included with this letter.

If you have any questions or require any additional information, please contact the Tax Relief for Pollution Control Property Program at (512) 239-6348.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Hatlett".

Ron Hatlett  
Tax Relief Program  
Chief Engineer's Office

Herman W. Shaeff, Ph.D. *Chairman*  
Buckle, Arthur *Commissioner*  
Charles Robinson *Commissioner*  
Mark K. Vossler, Ph.D. *Executive Director*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

### USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application 8262 filed by:

Mizuho Corporate Bank MIBC (USA)  
SUNRISE CHEMICAL BAYPORT FACILITY  
10500 BAY AREA BLVD  
PASADENA TX 77507

The pollution control property/project listed in the Use Determination Application is:

The following items: Flare; Monitoring Equipment on control devices; Fugitive Emission Monitors; Low NOx Burners; Welded Pipe Joints; Hoods & Collection Systems; Stacks; Conveyances, Pumps, Sumps, Tanks, & Basins; Waste Water Treatment Facility; Storm Water Containment; Waste Water Impoundments; Monitoring & Control Equipment; and Potable Water Systems.

The outcome of the review is:

A positive use determination of 100% for the Flare; Monitoring Equipment on control devices; Fugitive Emission Monitors; Low NOx Burners; Welded Pipe Joints; Hoods & Collection Systems; Stacks; Conveyances, Pumps, Sumps, Tanks, & Basins; Waste Water Treatment Facility; Storm Water Containment; Waste Water Impoundments; Monitoring & Control Equipment; and Potable Water Systems as detailed in the property description.

This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.



Executive Director

02/23/2005

Date

## **EXHIBIT “F”**

**EXECUTIVE DIR.’S RESPONSE TO SARTOMER INC.’S  
APPEAL OF THE EXECUTIVE DIR.’S NEGATIVE USE  
DETERMINATION, APPEAL OF THE EXECUTIVE  
DIR.’S NEGATIVE USE DETERMINATIONS ISSUED TO  
SARTOMER INC. APPLICATION NOS. 13805 & 13806,  
TCEQ DOCKET NOS. 2009-1679-MIS-U  
& 2009-1680-MIS-U**

TCEQ DOCKET NOS. 2009-1679-MIS-U & 2009-1680-MIS-U  
USE DETERMINATION NOS. 13805 & 13806

APPEAL OF § BEFORE THE  
THE EXECUTIVE DIRECTOR'S §  
NEGATIVE USE DETERMINATIONS § TEXAS COMMISSION ON  
ISSUED TO SARTOMER INC. §  
APPLICATION NOS. 13805 & 13806 § ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO SARTOMER INC.'S APPEAL OF  
THE EXECUTIVE DIRECTOR'S NEGATIVE USE DETERMINATIONS

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this response to Sartomer Inc.'s (Sartomer or Appellant) appeal of the Executive Director's negative use determinations issued for the wastewater treatment system that services its Sheldon Road Plant WCV2 facility. The appeal was submitted by Associated Tax Appraisers on Sartomer's behalf.

For the reasons described below, the Executive Director respectfully requests that the Commission deny Sartomer's appeals and affirm the Executive Director's Tier I negative use determinations for the wastewater treatment system that services its Sheldon Road Plant WCV2 facility.

PROGRAM BACKGROUND

This appeal of the Executive Director's negative use determination is filed pursuant to H.B. 3121 (77<sup>th</sup> Tex. Legislature, 2001) establishing an appeals process for use determinations and the Commission rules implementing the legislation. *See* Tex. Tax Code § 11.31 and 30 Tex. Admin. Code (30 TAC) § 17.25.

In 1993, the citizens of Texas voted to adopt a tax measure called Proposition 2. Proposition 2 was implemented when Article VIII, § 1-1 was added to the Texas Constitution on November 2, 1993. The amendment allowed the legislature to "exempt from ad valorem taxation all or part of real and personal property used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution."

The Texas Legislature codified the constitutional amendment in 1993 as Tex. Tax Code § 11.31 (effective January 1, 1994). The statutory language in the codified version mirrored the language of Article VIII, § 1-1. In 2001, the legislature amended Section 11.31 when it passed H.B. 3121 (effective September 1, 2001). This bill added several new procedural requirements to § 11.31, including a provision requiring the establishment and implementation of a process to appeal use determinations. *See* Tex. Tax Code § 11.31(e) and 30 TAC § 17.25. The amendment also required the

Commission to adopt new rules establishing specific standards for the Executive Director to follow in making use determinations for property that qualified for either full or partial pollution control use determinations. See Tex. Tax Code § 11.31(g). Appeals under Section 17.25 of the Commission rules may be filed by either the applicant seeking the determination, or by the chief appraiser of the tax appraisal district affected by the determination. Tex. Tax Code § 11.31(e) and 30 TAC § 17.25(a)(2). The Appellant is required to explain the basis for the appeal. 30 TEX. ADMIN. CODE § 17.25(b)(5).

### PROCEDURAL BACKGROUND

On or about May 15, 2009, Associated Tax Appraisers filed two Tier I applications on behalf of Sartomer requesting 100% positive use determinations equal to the amount of Sartomer's financial contribution towards a wastewater treatment system that services their Sheldon Road Plant WCV2 facility.<sup>1</sup> Sartomer Inc. cited Title 40 of the Code of Federal Regulations (40 CFR) Part 61, Subpart FF (regarding National Emission Standards for Benzene Waste Operations) and 40 CFR Part 268, Subpart C (regarding Prohibitions on Land Disposal) as the environmental laws, rules or regulations that were being met or exceeded by the installation of the wastewater treatment system.<sup>2</sup> Sartomer cited Item W-57 on Part A of the Equipment and Categories List (ECL) as the applicable listing for the wastewater treatment system.<sup>3</sup> On June 9, 2009, the Executive Director issued administrative Notices of Deficiency (NODs) on both applications, stating:

"The property description in your application is not adequate to communicate the nature and purpose of the item. It is not clear what type of facility has been installed, who owns it, what relation exists between Sartomer and LyondellBasell, where it is located, what the acronyms used mean, etc. Please provide a clear description of exactly what is covered in the application, whether Sartomer owns part of the facility (and if not, what their contribution covers), and any other relevant information, as well as a process flow diagram showing all components of the system, whom owns each or the portion of each owned by Sartomer, and the relation of this system to the rest of the facility."<sup>4</sup>

On July 14, 2009, Sartomer responded to the June 9, 2009 NODs, stating:

"[P]lease be advised that the Sartomer Company owns two manufacturing units within LyondellBasell Industries (LBI) Channelview Texas Operations

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<sup>1</sup> Use Determination Application No. 13805 describes the property at issue as "Sartomer's SMA contribution towards a new, above-ground bio treatment facility." Use Determination Application 13806 describes the property at issue as "Sartomer's Polybd contribution towards a new, above-ground bio treatment facility." Both property descriptions included the statement, "The project was managed and installed by LyondellBasell." See Use Determination Application Nos. 13805 & 13806.

<sup>2</sup> See Use Determination Application Nos. 13805 & 13806.

<sup>3</sup> Id.

<sup>4</sup> See Administrative Notices of Deficiency (NOD), dated June 9, 2009 (Attached as ED's Exh. #1).

North Facility. Sartomer contracts LyondellBasell Industries to operate and maintain their two units on Sartomer's behalf. LyondellBasell Industries provides utility services to Sartomer's units within Channelview Texas Operation North Facility. *LyondellBasell Industries owns and operates the on-site ECU. Sartomer does not own or operate the aforementioned ECU...* Sartomer's contribution of \$2,750,000 to the ECU Upgrade Project was based on 7% of total wastewater streams loading from SMA & PolyBd (Sartomer's on-site processing units) and processed through *LyondellBasell Industries' Environmental Control Unit.*" (emphasis added).<sup>5</sup>

On July 17, 2009, the applications were declared administratively complete. On July 22, 2009, ED staff issued technical NODs, asking "Who owns the wastewater treatment plant? Who has responsibility for the property taxes related to the wastewater treatment plant? Does Sartomer pay LyondellBasell a fee for operating the wastewater treatment plant?"<sup>6</sup> On August 22, 2009, Sartomer responded via email, and attached a chart which stated "LyondellBasell owns and operates the wastewater treatment plant, Sartomer pays a usage fee. LyondellBasell is responsible for the property tax."<sup>7</sup> On September 22, 2009, the applications were declared technically complete and the Executive Director issued negative use determinations.<sup>8</sup> On October 12, 2009, Associated Tax Appraisers timely filed use determination appeal letters with the TCEQ's Office of the Chief Clerk on Sartomer's behalf.<sup>9</sup>

#### APPELLANT'S CLAIM

Sartomer's appeal letters provide:

"The basis for the negative use determination is that Sartomer does not own the pollution control property at issue. Please be advised that the cost associated with this application is Sartomer's contribution towards a wastewater treatment plant and that Sartomer has included this portion of the wastewater treatment plant on the rendition they filed with the local Appraisal District."<sup>10</sup>

#### LEGAL ANALYSIS

1. SARTOMER IS NOT ELIGIBLE FOR A POSITIVE USE DETERMINATION BECAUSE THEY DO NOT HAVE AN

<sup>5</sup> See Sartomer's Responses to June 9, 2009 Administrative NODs, dated July 14, 2009 (Attached as ED's Exh. #2).

<sup>6</sup> See Technical NODs, dated July 22, 2009 (Attached as ED's Exh. #3).

<sup>7</sup> See Sartomer's Response to July 22, 2009 Technical NODs (Attached as ED's Exh. #4).

<sup>8</sup> See Use Determination Nos. 13805 & 13806.

<sup>9</sup> See Use Determination No. 13805 Appeal Letter, dated October 8, 2009 & Use Determination No. 13806 Appeal Letter, dated October 8, 2009.

<sup>10</sup> Id.

## 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 LyondellBasell.<sup>11</sup> 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.<sup>12</sup> Sartomer has not presented any evidence that it received an ownership interest in LyondellBasell'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 LyondellBaell'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;*
- (2) a description of the property by type or category;
- (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;
- (4) the physical location or taxable situs of the property; and
- (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.

<sup>11</sup> See Sartomer's Responses to June 9, 2009 Administrative NODs, dated July 14, 2009 (Attached as ED's Exh. #2) & Sartomer's Responses to July 22, 2009 Technical NODs, dated August 22, 2009 (Attached as ED's Exh. #4).

<sup>12</sup> Tex. Tax Code § 11.31(a) & 30 TAC § 17.1.

*(d) A fiduciary who renders property shall indicate his fiduciary capacity and shall state the name and address of the owner.” (emphasis added).<sup>13</sup>*

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.

### CONCLUSION

After careful consideration of the appeals filed by Associated Tax Appraisers on Sartomer's behalf on Use Determination Application Numbers 13805 and 13806, the Executive Director concludes that its original Tier I negative use determinations were not issued in error. The Appellant has failed to provide any legal basis upon which the Commission should reverse the Executive Director's use determinations in this case. The Executive Director's use determinations are consistent with the terms and mandates set forth in the relevant statutes and rules. The assertions of the Appellant do not alter the findings and the final negative use determinations issued by the Executive Director in this case.

Accordingly, the Executive Director respectfully requests that the Commission deny the instant appeals and affirm the Executive Director's Tier I negative use determinations.

Respectfully submitted,  
Texas Commission on Environmental  
Quality

Mark R. Vickery, P.G.  
Executive Director

Robert Martinez, Director  
Environmental Law Division

---

<sup>13</sup> See Tex. Tax Code § 22.01.

By Tim Reidy  
Timothy J. Reidy, Staff Attorney  
Environmental Law Division  
State Bar No. 24058069  
P.O. Box 13087, MC 173  
Austin, Texas 78711-3087  
(512) 239-0969

REPRESENTING THE EXECUTIVE  
DIRECTOR OF THE TEXAS  
COMMISSION ON ENVIRONMENTAL  
QUALITY

CERTIFICATE OF SERVICE

I certify that on December 4, 2009 an original and seven copies of the "Executive Director's Response to Sartomer Inc.'s Appeal of the Executive Director's Negative Use Determinations" was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a complete copy was transmitted by mail, facsimile, electronic mail or hand-delivery to all persons on the attached mailing list.

Tim Reidy  
Timothy J. Reidy, Staff Attorney  
Environmental Law Division  
State Bar No. 24058069

Mailing List

Executive Director's Response to Sartomer Inc.'s Appeal of the Executive Director's  
Negative Use Determinations

TCEQ Docket Nos. 2009-1679-MIS-U & 2009-1680-MIS-U

Use Determination Application Nos. 13805 & 13806

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

Eli Martinez, Attorney  
TCEQ Public Interest Counsel, MC 103  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512/239-3974  
Fax: 512/239-6377

Sartomer Inc.  
P.O. Box 56561  
Houston, Texas 77256-6561

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

Chief Appraiser  
Harris County Appraisal District  
P.O. Box 922004  
Houston, Texas 77292

Bridget Bohac, Director  
TCEQ Office of Public Assistance, MC  
108  
P.O. Box 13087  
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Susana M. Hildebrand, P.E.  
TCEQ Chief Engineer's Office, MC168  
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Tel: 512/239-4696  
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Kyle Lucas  
TCEQ Alternative Dispute Resolution,  
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P.O. Box 13087  
Austin, Texas 78711-3087  
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Fax: 512/239-4015

Chance Goodin  
TCEQ Chief Engineer's Office, MC 168  
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Fax: 512/239-6188

Minor Hibbs  
TCEQ Chief Engineer's Office, MC 168  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512/239-6590  
Fax: 512/239-1794

**ED's Exhibit #1 –  
Administrative Notices of  
Deficiency (NODs)**

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 09, 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, 13805, the reviewer has determined that additional information is required. This application was filed for the following facility:

8280 SHELDON RD PLANT WCV2  
8280 SHELDON RD  
CHANNELVIEW TX 77049

The additional information required is:

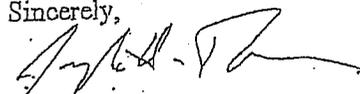
Issue 1: The property description in your application is not adequate to communicate the nature and purpose of the item. It is not clear what type of facility has been installed, who owns it, what relation exists between Sartomer and LyondellBasell, where it is located, what the acronyms used mean, etc. Please provide a clear description of exactly what is covered in the application, whether Sartomer owns part of the facility (and if not, what their contribution covers), and any other relevant information, as well as a process flow diagram showing all components of the system, whom owns each or the portion of each owned by Sartomer, and the relation of this system to the rest of the facility. Please note that in your attachment the first description block uses the term wastewater along with three unexplained acronyms, the second description block mentions a bio treatment facility, a group of federal air regulations and another group of federal solid waste regulation are cited, and the ECL number is for a wastewater treatment plant; please verify that these entries are correct.

Issue 2: 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 3: 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.

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,



Joseph Thomas  
Tax Relief for Pollution Control Property Program

---

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*

June 09, 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, 13806, the reviewer has determined that additional information is required. This application was filed for the following facility:

8280 SHELDON RD PLANT WCV2  
8280 SHELDON RD  
CHANNELVIEW TX 77049

The additional information required is:

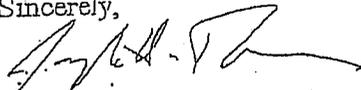
Issue 1: The property description in your application is not adequate to communicate the nature and purpose of the item. It is not clear what type of facility has been installed, who owns it, what relation exists between Sartomer and LyondellBasell, where it is located, what the acronyms used mean, etc. Please provide a clear description of exactly what is covered in the application, whether Sartomer owns part of the facility (and if not, what their contribution covers), and any other relevant information, as well as a process flow diagram showing all components of the system, whom owns each or the portion of each owned by Sartomer, and the relation of this system to the rest of the facility. Please note that in your attachment the first description block uses the term wastewater along with three unexplained acronyms, the second description block mentions a bio treatment facility, a group of federal air regulations and another group of federal solid waste regulation are cited, and the ECL number is for a wastewater treatment plant; please verify that these entries are correct.

Issue 2: 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 3: 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.

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,



Joseph Thomas  
Tax Relief for Pollution Control Property Program

---

**ED's Exhibit #2 –  
Sartomer's Responses to  
Administrative Notices of  
Deficiency (NODs)**

ASSOCIATED TAX APPRAISERS

AD VALOREM TAX CONSULTANTS

July 14, 2009

*VIA FedEX TRK# 7967 7554 4175*

Mr. Joseph Thomas  
Texas Commission on Environmental Quality  
Tax Relief for Pollution Control Property Program  
12100 Park 35 Circle, Bldg F MC110  
Austin, Texas 78753-1808

Re: Application No(s): 13805  
Company Name: 8280 Sheldon Rd Plant WCV2  
Street Address: 8280 Sheldon Rd  
Channelview, TX 77049

Dear Mr. Thomas:

Pursuant to 30 Texas Administrative Code 17.12(2)(A), please allow this correspondence to serve as our formal response to your Notice of Deficiency, which was received on June 15, 2009, regarding Use Determination Application No. 13805. In that regard, enclosed please find an original and one (1) copy of the revised Application for Tax Relief for Pollution Control Property.

Further in response to your for information regarding the pollution control property, please be advised that Sartomer Company owns two manufacturing units within LyondellBasell Industries (LBI) Channelview Texas Operations North Facility. Sartomer contracts LyondellBasell Industries to operate and maintain their two units on Sartomer's behalf. LyondellBasell Industries provides utility services to Sartomer's units within Channelview Texas Operations North Facility. LyondellBasell Industries owns and operates the on-site ECU. Sartomer does not own nor operate the aforementioned ECU.

Land Disposal Restrictions were the driver for the upgrade. The Environmental Control Unit (ECU) currently processes all process wastewater through three aeration basins. These aeration basins are surface impoundments. The Resource Conservation and Recovery Act (RCRA), the Land Disposal Restrictions (LDR) and a wastewater discharge permit prohibit hazardous materials from entering surface impoundments. This project's scope includes, but is not limited to, the installation of vapor controlled equalization tankage for process wastewater, above grade aeration equipment, and sumps, pumps and piping for stormwater containment.

Sartomer's contribution of \$ 2,750,000 to the ECU Upgrade Project was based on 7% of total wastewater streams loading from SMA & PolyBd (Sartomer's on-site processing units) and processed through LyondellBasell Industries' Environmental

## ASSOCIATED TAX APPRAISERS

### AD VALOREM TAX CONSULTANTS

Control Unit. A process flow sheet and process description can not be provided due to confidentiality, the ECU is owned by LyondellBasell Industries, not Sartomer.

In addition to Sartomer's contribution to the ECU Upgrade Project, the Stormwater Project initiated separation between rain water and waste water in the process areas. The purpose of this project is to comply with Texas storm water regulations. The referenced regulation is:

- \* TPDES Discharge Permit - direct discharge of process wastewater through stormwater outfall is prohibited.

Storm water in both the Poly Bd (Poly-Butadiene) and SMA (Styrene Maleic Anhydride) units have losses of containment during large storm events and can potentially contaminate run off water. This resulted in future violations of the regulations.

LyondellBasell Industries, in a site wide effort originally conceived this project after an audit by the regulatory agencies. Sartomer had decided to participate by contributing to the effort financially. Improvements were made to ensure all stormwater within the process area is collected and sent to wastewater treatment ECU and that all stormwater non-contaminated by process run into city stormwater stream.

The design criterion was to contain a 10 year 24 hour storm event. Instantaneous downpours are very significant in the Channelview area. The designs were very conservative in the amount of water to be contained in the operating area at any one time. To manage wastewater/stormwater in the Sartomer units, a project was developed to install significant curb containment, pumping and piping systems required to remove large volumes of water very quickly.

We hope this response satisfies any and all requirements of the Texas Commission on Environmental Quality in regard to the enclosed applications for the use determination of pollution control property. If there are any addition materials or information that the TCEQ may need, please do not hesitate to contact us.

We appreciate your cooperation in this regard, and look forward to hearing from you.

Sincerely yours,

Associated Tax Appraisers

**ASSOCIATED TAX APPRAISERS**

**AD VALOREM TAX CONSULTANTS**

July 14, 2009

VIA FedEX TRK# 7967 7554 4175

Mr. Joseph Thomas  
Texas Commission on Environmental Quality  
Tax Relief for Pollution Control Property Program  
12100 Park 35 Circle, Bldg F MC110  
Austin, Texas 78753-1808

Re: Application No(s): 13806  
Company Name: 8280 Sheldon Rd Plant WCV2  
Street Address: 8280 Sheldon Rd  
Channelview, TX 77049

Dear Mr. Thomas:

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Land Disposal Restrictions were the driver for the upgrade. The Environmental Control Unit (BCU) currently processes all process wastewater through three aeration basins. These aeration basins are surface impoundments. The Resource Conservation and Recovery Act (RCRA), the Land Disposal Restrictions (LDR) and a wastewater discharge permit prohibit hazardous materials from entering surface impoundments. This project's scope includes, but is not limited to, the installation of vapor controlled equalization tankage for process wastewater, above grade aeration equipment, and sumps, pumps and piping for stormwater containment.

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## ASSOCIATED TAX APPRAISERS

### AD VALOREM TAX CONSULTANTS

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Storm water in both the Poly Bd (Poly-Butadiene) and SMA (Styrene Maleic Anhydride) units have losses of containment during large storm events and can potentially contaminate run off water. This resulted in future violations of the regulations.

LyondellBasell Industries, in a site wide effort originally conceived this project after an audit by the regulatory agencies. Sartomer had decided to participate by contributing to the effort financially. Improvements were made to ensure all stormwater within the process area is collected and sent to wastewater treatment ECU and that all stormwater non-contaminated by process run into city stormwater stream.

The design criterion was to contain a 10 year 24 hour storm event. Instantaneous downpours are very significant in the Channelview area. The designs were very conservative in the amount of water to be contained in the operating area at any one time. To manage wastewater/stormwater in the Sartomer units, a project was developed to install significant curb containment, pumping and piping systems required to remove large volumes of water very quickly.

We hope this response satisfies any and all requirements of the Texas Commission on Environmental Quality in regard to the enclosed applications for the use determination of pollution control property. If there are any addition materials or information that the TCEQ may need, please do not hesitate to contact us.

We appreciate your cooperation in this regard, and look forward to hearing from you.

Sincerely yours,

Associated Tax Appraisers

---

**ED's Exhibit #3 – Technical  
Notices of Deficiency  
(NODs)**

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

July 22, 2009

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

This letter is to inform you of issues noted during the technical review of Use Determination Application 13805 for:

8280 SHELDON RD  
PLANT WCV2  
8280 SHELDON RD  
CHANNELVIEW TX 77049

The reviewer has determined that the following information is missing and/or incomplete:

Who owns the wastewater treatment plant? Who has responsibility for the property taxes related to the wastewater treatment plant? Does Sartomer pay LyondellBasell a fee for operating the wastewater treatment plant?

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 technical 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) 239-6348. Your response may be faxed to 512/239-5678, electronically mailed to [rhatlett@tceq.state.tx.us](mailto:rhatlett@tceq.state.tx.us), or sent by U.S. Mail to:

Tax Relief for Pollution MC110, PO Box 13087, Austin TX 78711 - 3087

Sincerely,

Ronald Hatlett  
Tax Relief for Pollution Control Property Program

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 22, 2009

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

This letter is to inform you that during the technical review of Use Determination Application, 13806, for:

8280 SHELDON RD PLANT WCV2  
8280 SHELDON RD  
CHANNELVIEW TX 77049

the reviewer has determined that the following information is missing and/or incomplete:

Who owns the wastewater treatment plant? Who has responsibility for the property taxes related to the wastewater treatment plant? Does Sartomer pay LyondellBasell a fee for operating the wastewater treatment plant?

Please provide this additional information as soon as possible. As per 30 TAC 17.12(2) 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 technical review of this application will resume. If you have any questions or require assistance in developing the additional required information please contact the Tax Relief for Pollution Control Property Program at (512) 239-6348. Your response may be faxed to 512/239-5678, electronically mailed to [rhatlett@tceq.state.tx.us](mailto:rhatlett@tceq.state.tx.us), or sent by U.S. Mail to:

Tax Relief for Pollution MC110  
PO Box 13087  
Austin TX 78711-3087

Sincerely,

A handwritten signature in cursive script, appearing to read "R Hatlett".

Ronald Hatlett

Tax Relief for Pollution Control Property Program

---

**ED's Exhibit #4 –  
Sartomer's Response to  
Technical Notices of  
Deficiency (NODs)**

13804	<p>What are 'maintenance cleaning activities'?          What is being cleaned? What is being maintained?</p>	<p>Install piping to allow butadiene and HRVOC containing equipment to be cleared and recovered back to the process or sent to the flare. This project provided piping that has been strategically placed in the process to allow steaming of equipment to the flare rather than directly to the atmosphere. Justification: To control VOC emissions from clearing of equipment (i.e., pumps, filters, exchangers) for maintenance activity while the unit is operational.</p>
13805	<p>Who owns the wastewater treatment plant?          Who has responsibility for the property taxes related to the wastewater treatment plant?          Does Sartomer pay LyondellBasell a fee for operating the wastewater treatment plant?</p>	<p>LyondellBasell owns and operates the wastewater treatment plant, Sartomer pays a usage fee. LyondellBasell is responsible for the property tax.</p>
13806	<p>Who owns the wastewater treatment plant?          Who has responsibility for the property taxes related to the wastewater treatment plant?          Does Sartomer pay LyondellBasell a fee for operating the wastewater treatment plant?</p>	<p>LyondellBasell owns and operates the wastewater treatment plant, Sartomer pays a usage fee. LyondellBasell is responsible for the property tax.</p>
13807	<p>8/12          ECL-A-62</p>	
13808	<p>This appears to be a project to improve the efficiency of a piece of process equipment. Process improvements, which provide an environmental benefit, are eligible for a partial determination. In order to request a partial determination a Tier III application must be filed. Provide additional information showing that this is not a process improvement project or provide the information necessary to convert the application into a Tier III application.</p>	<p>Azeotrope Column Bottoms Cooler Project Installed to increase efficiency of cooling azeo column bottoms flow to reduce environmental emissions due to vapor loss at elevated temperatures. The primary objective of this cooler is to assure that the partial pressure of organics, primarily isopropanol from the azeotrope column, does not exceed 0.5 psia at the process waste collection basin. Without the cooler in place, Volatile Organic Compounds (VOC) exceeds environmental regulatory requirements of Highly Reactive Volatile Organic Compounds (HRVOC).</p>
13809		