

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

April 6, 2010

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: **MIZUHO CORPORATE BANK MHC (USA)**
TCEQ DOCKET NO. 2010-0252-MIS-U

Dear Ms. Castañuela:

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

Sincerely,

A handwritten signature in cursive script that reads "Amy Swanholm".

Amy Swanholm, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 P.O. BOX 13087 AUSTIN, TEXAS 78711-3087 512-239-6363

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TCEQ DOCKET NO. 2010-0252-MIS-U

USE DETERMINATION	§	BEFORE THE
APPLICATION NO. 8262, MIZUHO	§	TEXAS COMMISSION ON
CORPORATE BANK MHCB (USA)	§	ENVIRONMENTAL QUALITY

**OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO APPEAL OF POSITIVE USE DETERMINATION**

To the members of the Texas Commission on Environmental Quality:

The Office of the Public Interest Counsel (OPIC) files this response to the Harris County Appraisal District's appeal of the Executive Director's (ED) use determinations regarding Mizuho Corporate Bank MHCB (USA)'s use determination for Application No. 8626.

I. BACKGROUND

On February 15, 2010, the Harris County Appraisal District (Harris County) filed an appeal of a use determination on Application No. 8262. The use determination was originally issued in 2005. By letter dated December 3, 2009, the ED approved a request to change the company name on the use determination. A new use determination, issued under the name of Mizuho Corporate Bank MHCB (USA) and backdated to February 23, 2005, was included with the December 3, 2009 letter.¹

II. APPLICABLE LAW

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

¹ Letter to Nisseki Chemical from Ron Hartlett of the TCEQ's Chief Engineer's Office, dated December 3, 2009, a copy of which was included in Harris County's appeal.

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).

The Texas Property Tax Code and the TAC require the ED to, as soon as practicable, send notice by regular mail to the chief appraiser of the appraisal district for the county where the property is located. 30 TAC §17.12(1); *see also* Texas Property Tax Code (TPTC) § 11.31(d). The ED is also required to send a copy of the use determination letter issued by the ED. 30 TAC § 17.12(4)(C); *see also* Texas Property Tax Code (TPTC) §11.31(d).

III. ANALYSIS

In its appeal, Harris County requests the Commission reopen or reconsider the use determination of Application No. 826 under 30 TAC §17.25(d). Harris County alleges that it never received notice of the initial application for a use determination or the ED's positive use determination, as required by 30 TAC §17.12(1) and (4)(d). Harris County further challenges the substance of the use determination, stating that Mizuho Corporate Bank MHC (USA) (Mizuho) does not actually utilize the production control property at its facility, and that to issue a 100% use determination in this situation would be contrary to longstanding TCEQ regulations. Without addressing the substantive issues raised in the appeal, OPIC recommends remanding this matter to the ED under 30 TAC §17.25(d) for the reasons discussed below.

Harris County states that it never received any information about the initial application or a copy of the positive use determination. The County states that it was entitled to notice under Texas Property Tax Code §11.31(e), but that it did not receive notice. It is unclear whether the notice deficiency is being raised with respect to the original issuance of the use determination in 2005 and the change of name and reissuance of the use determination in 2009. Regardless of whether the 2005 or the 2009 use determination is being referenced (or both), the County has missed the 20 day deadline for filing a timely appeal of a use determination. Harris County, as the county appraisal district where the facility is located, was entitled to notice of any use determination application and issued use determination. OPIC is unable to determine whether

Harris County received notice in accordance with Texas Property Tax Code §11.31(e) and 30 TAC §17.12(1) and (4)(C). Therefore, given Harris County's claims that notice was not given and the lack of a record showing otherwise, OPIC recommends the matter be remanded to the ED under 30 TAC §17.25(d)(2).

OPIC further supports remand so that the ED may address any confusion related to the dates on the documents included with Harris County's appeal. The December 3, 2009 letter from the ED states that the new determination was included with that letter. Though issued in 2009, it appears the determination was backdated to February 23, 2005. The use determination is dated February 23, 2005, though it is printed on agency letterhead that did not exist until 2009. A remand followed by the issuance of a new use determination would clarify any confusion related to the history of the subject applications and use determination decisions previously made by the ED.

IV. CONCLUSION

For the reasons discussed above, OPIC supports a remand of this matter and the issuance of a new, properly-noticed use determination pursuant to 30 TAC §17.25(d)(2).

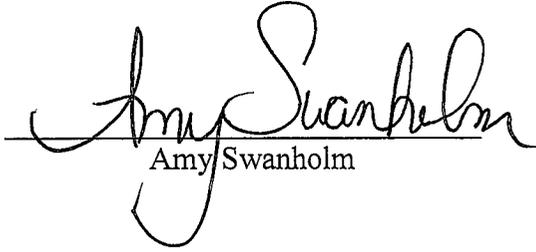
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2010, 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.


Amy Swanholm

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