

**DERICHEBOURG RECYCLING USA, INC.'S
REPLY TO RESPONSE BRIEFS FILED BY
THE TCEQ'S OFFICE OF PUBLIC INTEREST COUNSEL,
THE TCEQ'S EXECUTIVE DIRECTOR,
AND THE HARRIS COUNTY APPRAISAL DISTRICT**

TO: Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

FROM: Ronald P. Little
Associated Tax Appraisers
4543 Post Oak Place, Suite 232
Houston, Texas 77027

RE: TCEQ Docket No: 2015-0368-MIS-U
Use Determination App. No: 18145
Applicant: Derichebourg Recycling USA Inc.
7501 Wallisville Road, Houston, Texas
Regulated Entity No: RN100671254
Customer Reference No: CN603440926

This document is Derichebourg Recycling USA, Inc.'s (hereinafter referred to as "Derichebourg") reply to the response briefs filed by the Texas Commission of Environmental Quality's Office of Public Interest Counsel (hereinafter referred to as "OPIC") and Executive Director (hereinafter referred to as "ED") and the Harris County Appraisal District ((hereinafter referred to as "HCAD") in regard to Derichebourg's appeal of the Executive Director's Negative Use Determination for the roofs, walls, foundations and floors of the Turnings Facility made the basis of Use Determination for Pollution Control Property Application No. 18145.

For reasons described below, Derichebourg respectfully requests that the Texas Commission on Environmental Quality (hereinafter referred to as "TCEQ") affirm its appeal and overturn the Executive Director's Negative Use Determination for the roofs, walls, foundations and floors of the Turnings Facility made the basis of Use Determination for Pollution Control Property Application No. 18145.

**REPLY TO THE OFFICE OF PUBLIC
INTEREST COUNSEL'S RESPONSE BRIEF**

Response: “The ED states that the Turnings Facility is used as part of the production process and is not a pollution control device. If it is true, the Turnings Facility is not eligible for a positive use determination under TCEQ rule § 17.6, which provides, in part, that property is not entitled to an exemption from taxation if the property is used, constructed, acquired or installed wholly to produce or provide a service.”

Reply: The Turnings facility is not part of the production process at Derichebourg's Wallisville Road Facility. The Turnings Facility was built apart from its recycling process facility and was designed solely to collect and contain cutting fluids that drain from turnings before they were transported to another portion of Derichebourg's main facility to be processed and recycled and to divert storm water from contacting residual cutting fluids. When trucks bring containers full of turnings to Derichebourg's Wallisville Road Facility, they are routed to the Turnings Facility in order to drain the containers of cutting fluids that have decanted at the end bottom and then to dump the turnings onto the building's floor and allowed any remaining cutting fluid to be collected by the building's drainage system. The entire Turnings Facility is constructed on leak proof concrete pads, which are designed to be self-contained and rain proof in order to control contamination. The facility has drains on the pads in order to collect liquids, which are pumped into two high capacity tanks.

REPLY TO THE EXECUTIVE DIRECTOR'S RESPONSE BRIEF

Response: “To support its application, Derichebourg cites 40 CFR §§ 112.7 (General requirements for Spill Prevention, Control and Countermeasure Plans (SPCCP)) and 279.22 (Used oil storage). Neither rule cited require an enclosed structure, such as a building, to be used, constructed, acquired, or installed around

Derichebourg's production process. The general requirements for a SPCCP require the development of a plan to address potential oil spills. The used storage requirements contain requirements for the storage of used oil."

Reply: On or about October 28, 2014, the TCEQ sent Derichebourg a Technical Notice of Deficiency that suggested 40 Code of Federal Regulations (CFR) Part 112.7 and 279.22 as appropriate citations to use on its Use Determination Application. A copy of the Technical Notice of Deficiency is attached hereto at Exhibit "A." Upon the recommendation of the TCEQ, Derichebourg amended its Use Determination Application to include these citations.

40 CFR Part §279.22 states "that Used oil generators are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR part 112) in addition to the requirements of this Subpart." 40 CFR Part §112.7 Subpart C, then requires that the owner or operator of a facility subject to this part must "provide appropriate containment and/or diversionary **structures** or equipment to prevent a discharge as described in §112.1(b). The **entire containment system**, including **walls** and **floor**, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup occurs." As a used oil generator, Derichebourg is required to provide appropriate containment and/or diversionary structures to prevent a discharge. The purpose of the Turnings building is to collect and contain cutting fluids that drain from turnings and divert storm water from contacting residual cutting fluids.

Response: "Because the building was installed for production purposes, Derichebourg is not entitled to a Tier I 100% positive determination for the roofs, walls, foundations and floors of the building."

Reply: The Turnings facility is not part of the production process at Derichebourg's Wallisville Road Facility. The Turnings Facility was built apart from its recycling process facility and was designed solely to collect and contain cutting fluids that drain from turnings before they were transported to another portion of Derichebourg's main facility to be processed and recycled and to divert storm water from contacting residual cutting fluids. When trucks bring containers full of turnings to Derichebourg's Wallisville Road Facility, they are routed to the Turnings Facility in order to drain the containers of cutting fluids that have decanted at the top and bottom and then to dump the turnings onto the building's floor and allowed any remaining cutting fluid to be collected by the building's drainage system. The entire Turnings Facility is constructed on leak proof concrete pads, which are designed to be self-contained and rain proof in order to control contamination. The facility has drains on the pads in order to collect liquids, which are pumped into two high capacity tanks.

Response: "The property described under W-74 is "[s]tructures used for the capture and control of storm water and process wastewater or emergency diversion of process material. Land means only land that is actually occupied by the diversion or storage structure." The building that houses Derichebourg's production process does not fall within this description. Because the building does not meet any of the descriptions in Tier I Table Items S-20 or W-74, Derichebourg is not entitled to a Tier I 100% positive use determination for the roofs, walls, foundation and floors of the building."

Reply: On or about August 22, 2014, the TCEQ sent Derichebourg a Technical Notice of Deficiency that suggested S-20 as a more appropriate Tier I Table Item to use on its Use Determination Application. A copy of the Technical Notice of Deficiency is attached hereto at Exhibit "B." Upon the recommendation of the

TCEQ, Derichebourg amended its Use Determination Application to use S-20 as the Tier I Table Item on its Use Determination Application. Derichebourg never received another Technical Notice of Deficiency regarding its use of this Tier I Table Item from the TCEQ.

REPLY TO THE HARRIS COUNTY APPRAISAL DISTRICT'S RESPONSE BRIEF

Response: The building that is the subject of this appeal, is used by the Appellant in the process of producing its marketable product and therefore not entitled to a 100% positive use determination. Vehicles are delivered to the Building to be crushed and shredded. Before that can be done, however, all of the combustible liquid (i.e. oil and gas) must be removed. These liquids are removed from the vehicles' tanks and then the vehicles are crushed and shredded, and the recaptured waste liquids are transferred to storage tanks. The crushed vehicles and recycled liquids are then sold by the Appellant. The Building is not used solely for the control of pollution, but rather is a structure in which the Appellant prepares its product for sale, similar to any factory manufacturing a product.

Reply: HCAD's claim that vehicles are delivered to the Turnings Building to be crushed and shredded and that fluids collected and contained by that process are sold by Derichebourg is wrong. No vehicles are crushed or shredded within the Turnings Facility. In addition, the Turnings facility is not part of the production process at Derichebourg's Wallisville Road Facility. The Turnings facility is not part of the production process at Derichebourg's Wallisville Road Facility. The Turnings Facility was built apart from its recycling process facility and was designed solely to collect and contain cutting fluids that drain from turnings before they were transported to another portion of Derichebourg's main facility to be processed and recycled and to divert storm water from contacting residual

cutting fluids. When trucks bring containers full of turnings to Derichebourg's Wallisville Road Facility, they are routed to the Turnings Facility in order to drain the containers of cutting fluids that have decanted at the and bottom and then to dump the turnings onto the building's floor and allowed any remaining cutting fluid to be collected by the building's drainage system. The entire Turnings Facility is constructed on leak proof concrete pads, which are designed to be self-contained and rain proof in order to control contamination. The facility has drains on the pads in order to collect liquids, which are pumped into two high capacity tanks.

CONCLUSION

All of the response briefs filed in this matter are predicated on the assumption that Derichebourg's Turnings Facility was installed for production purposes. However, none of the briefs explain what product is being produced or recovered or, in the case of HCAD, provides an incorrect description. As stated above, Derichebourg's The Turnings facility is not part of the production process at Derichebourg's Wallisville Road Facility. The Turnings Facility was built apart from it recycling process facility and was designed solely to collect and contain cutting fluids that drain from turnings before they were transported to another portion of Derichebourg's main facility to be processed and recycled and to divert storm water from contacting residual cutting fluids. Further, as a used oil generator, Derichebourg is required to provide appropriate containment and/or diversionary **structures** or equipment to prevent a discharge. In that regard, the Turnings Facility is used, constructed acquired and installed wholly to meet or exceed an adopted environmental rule or regulation and is used wholly as a facility, device and/or method for the control of air, water or land pollution, as required by §11.31 of the Texas Property Tax Code.

Based on the foregoing and reasons stated herein, Derichebourg requests that the TCEQ affirm its appeal and overturn the Executive Director's Negative Use Determination for the roofs, walls, foundations and floors of the Turnings Facility made the basis of Use Determination for Pollution Control Property Application No. 18145.

Mailing List
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TCEQ Docket No. 2015-0368-MIS-U

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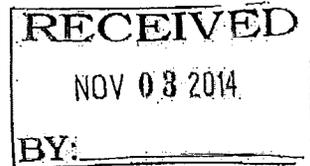
EXHIBIT A

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



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

October 28, 2014



Mr. Andrej Fedor
Agent
Associated Tax Appraisers
PO Box 91119
Austin, Texas 78709

Re: Notice of Technical Deficiency
Derichebourg Recycling USA, Inc.
Wallisville Road Facility
7501 Wallisville Rd
Houston (Harris County)
Regulated Entity Number: RN100671254
Customer Reference Number: CN603440926
Application Number: 18145
Tracking Number: 14-TCEQ-Derichebourg-Wallisville-001

Dear Mr. Fedor:

This letter responds to Derichebourg Recycling USA, Inc.'s Application for Use Determination, received June 6, 2014, pursuant to the Texas Commission on Environmental Quality's (TCEQ) Tax Relief for Pollution Control Property Program for the Wallisville Road Facility.

The TCEQ has conducted a technical review and has determined that the information required in 30 Texas Administrative Code (TAC) §17.10 is incomplete for application #18145. Please revise the application to include the following information and include a copy of this letter with your response.

Issue 1: Please provide a citation to the specific subsection of the adopted environmental rule being met by the installation and use of the pollution control equipment associated with the Turnings Facility. Title 40 CFR §279.45 contains requirements which must be met by used oil transporters at their transfer facilities. Derichebourg Recycling USA, Inc is not a used oil transporter. A more appropriate citation may be to 40 CFR §279.22 which requires used oil generators to meet the Spill Prevention, Control and Countermeasures requirements of 40 CFR §112 at their used oil storage areas. 40 CFR §112.7: Oil Pollution Prevention; General requirements for Spill Prevention, Control, and Countermeasure Plans; Provide appropriate containment and/or diversionary structures or equipment. This is an appropriate citation for equipment installed to prevent hydrocarbons from being released into the environment.

Issue 2: Please provide a detailed description of the business operations that occur within

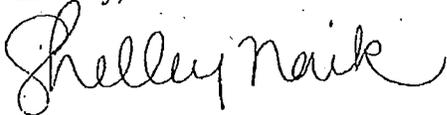
Mr. Andrej Fedor
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the building. Please note that roofs, walls, foundations, and floors of buildings are eligible for a positive use determination only when there is an adopted environmental rule or regulation requiring the activity to occur within an enclosed structure.

The TCEQ appreciates your response in this matter. The revised application must be submitted by November 30, 2014, to the TCEQ Tax Relief for Pollution Control Property Program, MC-110, P.O. Box 13087, Austin, Texas 78711-3087. Failure to submit a complete application, including the requested information, may result in your application being voided and the associated application fee being forfeited in accordance with 30 TAC §17.20(b).

If you have questions regarding this letter or need further assistance, please contact Ronald Hatlett of the Tax Relief for Pollution Control Property Program by telephone at (512) 239-6348, by e-mail at Ronald.Hatlett@tceq.texas.gov, or write to the Texas Commission on Environmental Quality, Tax Relief for Pollution Control Property Program, MC-110, P.O. Box 13087, Austin, Texas 78711-3087.

Sincerely,



Shelley Naik, Team Leader
Stationary Source Programs
Air Quality Division

SN/RH

Enclosure

EXHIBIT B

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



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

August 22, 2014

Mr. Andrej Fedor
Agent
Associated Tax Appraisers
PO Box 91119
Austin, Texas 78709

Re: Notice of Administrative Completeness and Technical Deficiency
Derichebourg Recycling USA, Inc.
Wallisville Road Facility
7501 Wallisville Rd
Houston (Harris County)
Regulated Entity Number: RN100671254
Customer Reference Number: CN603440926
Application Number: 18145
Tracking Number: 14-TCEQ-Derichebourg-Wallisville-001

Dear Mr. Fedor:

This letter responds to Derichebourg Recycling USA, Inc.'s Application for Use Determination, received June 6, 2014, pursuant to the Texas Commission on Environmental Quality's (TCEQ) Tax Relief for Pollution Control Property Program for the Wallisville Road Facility.

The TCEQ has determined that application #18145 contains sufficient detail to be declared administratively complete and a copy has been provided to the appropriate county appraisal district; however, in order to conduct our technical review as specified in 30 TAC §17.12, the following technical issues must be addressed. Please revise the application to include the following information and include a copy of this letter with your response.

Issue 1: Please adjust the property description to reflect only those items that are eligible for a positive use determination. Production buildings and the land occupied by the production buildings are not considered to be pollution control devices. The eligible property listed on the application appears to be the containment walls, sump, tanks, piping, and pumps.

Issue 2: The Tier I Table item list on the application, W-74: Diversion, is not appropriate. Item W-74 covers diversion structures such as weirs, dams, dikes, swales and trenches. An item that more appropriately describes the listed equipment is S-20: Waste Storage Used to Collect and/or Store Waste Prior to Treatment or Disposal.

Issue 3: Provide a citation to the specific subsection of the adopted environmental rule

Mr. Andrej Fedor

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being met by the installation of the equipment. Title 30 TAC §§335.471 through 335.480 contain the requirements for the development of a pollution prevention plan but do not contain any requirements for the installation of any pollution control or prevention equipment.

The TCEQ appreciates your response in this matter. The revised application must be submitted by September 24, 2014, to the TCEQ Tax Relief for Pollution Control Property Program, MC-110, P.O. Box 13087, Austin, Texas 78711-3087. Failure to submit a complete application, including the requested information, may result in your application being voided and the associated application fee being forfeited in accordance with 30 TAC §17.20(b).

If you have questions regarding this letter or need further assistance, please contact Ronald Hatlett of the Tax Relief for Pollution Control Property Program by telephone at (512) 239-6348, by e-mail at Ronald.Hatlett@tceq.texas.gov, or write to the Texas Commission on Environmental Quality, Tax Relief for Pollution Control Property Program, MC-110, P.O. Box 13087, Austin, Texas 78711-3087.

Sincerely,



Guy Hoffman, Acting Team Leader
Stationary Source Programs
Air Quality Division

GH/RH

Enclosure

cc: Chief Appraiser, Harris County Appraisal District, PO Box 922004, Houston, Texas
77292