United States Small Business Administration
Office of Hearings and Appeals

SIZE APPEAL OF: Petromax Refining Company, LLC, Appellant Appealed from Size Determination No. SIZ-2025-162	SBA No. SIZ-6368 Decided: September 3, 2025

APPEARANCES

H. Todd Whay, Esq., Gerald H. Werfel, Esq., Baker, Cronogue, Tolle & Werfel, LLP, McLean, VA, for Petromax Refining Company, LLC

DECISION

I. Introduction and Jurisdiction

On June 5, 2025, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area V (Area Office) issued Size Determination No. SIZ-2025-162, granting a size protest filed against Petromax Refining Company, LLC (Appellant). The Area Office found that Appellant is an other than small business for the applicable size standard of 1,500 employees or 200,000 barrels/day. On June 23, 2025, Appellant filed an instant appeal. Appellant contends that the Area Office erred in dismissing the protest, and requests that SBA's Office of Hearings and Appeal (OHA) reverse or remand. For the reasons discussed *infra*, the appeal is denied, and the size determination is affirmed.

OHA decides size determination appeals under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. parts 121 and 134. Appellant timely filed the instant appeal on April 24, 2025. Accordingly, this matter is properly before OHA for decision.

II. Background

A. Solicitation

On September 13, 2024, the Defense Logistics Agency Energy (DLA Energy) issued Request for Proposals (RFP) No. SPE602-24-R-0709 for assistance with Turbine Fuel, Aviation (JP8); Turbine Fuel, Aviation (JAA) NSN; USG, Turbine Fuel, Aviation (JP5) NSN; and USG, Fuel, Naval Distillate (F76) NSN. (CO's Memorandum). The Contracting Officer (CO) set aside the procurement 41.67% for small businesses and designated North American Industry

Classification System (NAICS) code 324110, Petroleum Refineries, with a corresponding size standard of 1,500 employees or 200,000 bbls/day. *Id.* Bids were due on October 4, 2024. Appellant submitted a timely offer. *Id.*

B. Protest

On April 9, 2025, the CO informed Protestor (Appellant) that although a portion of its proposal was not selected for the contract award, it was selected as one of the apparent successful offerors for an estimated quantity of 252,832,700 US gallons of jet fuel. (Letter from Shannon L. Coleman to Bill D. Cook (April 9, 2025), at 1-3.) Since Appellant was a Historically Underutilized Business Zone (HUBZone) small business, the CO applied the Price Evaluation Preference (PEP) to their offer. *Id.* On May 9, 2025, the CO filed a timely protest with the Government Accountability Office (GAO) alleging that Appellant does not qualify for the HUBZone PEP because it is not an eligible HUBZone concern and it is other than small. (Protest at 1.)

In its protest, the CO asserted that GAO received a protest on April 26, 2025, alleging that Appellant does not qualify for the HUBZone PEP either because it is affiliated with entities that are not small, or Appellant intends to supply the product of a manufacturer which is not small and therefore runs afoul of the non-manufacturer rule. *Id.* The GAO protest included a public court document alleging that Appellant and Sunoco Partners Marketing & Terminals L.P. (Sunoco) were co-owners of the Bayview Refining Company, LLC (Bayview), neither of which are small businesses. (Att. 3.) *Id.* Additionally, the GAO protest asserts that if the allegations are true then Appellant's offer would be ineligible for HUBZone small business consideration. *Id.* In adopting the allegations that were cited in the GAO protest, the CO emphasized that she was previously unaware of the allegations made in Attachment 3. *Id.* The CO also noted that DLA Energy previously submitted a formal size protest to SBA on October 31, 2018, with concerns that a large percentage of Appellant's offered volume was manufactured by a non-HUBZone refinery. (Att. 4.) *Id.* The CO further stated that DLA Energy provided Appellant's maximum production capabilities and refining processes for SBA to consider with their size determination. *Id.* Lastly, the CO asserted that on February 7, 2019, SBA provided DLA Energy with a determination letter that confirmed Appellant's status as a HUBZone small business. (Att. 5.) *Id.*

The CO thus stated that based on the new information provided in Attachment 3, and allegations made in the underlying GAO protest, DLA Energy refers to the size protest of Appellant pursuant to FAR 19.302(c)(3) to SBA and requests a formal size determination. *Id.*

C. Size Determination

On June 5, 2025, the Area Office issued Size Determination No. SIZ-2025-162, finding that Appellant is not a small business concern for the applicable size standard. (Size Determination at 1.) The Area Office found that on April 25, 2014, Sunoco and Appellant formed Bayview, and at the time of formation Bayview was owned 51% by Appellant and 49% by Sunoco. (*Id.* at 5.) The purpose of the joint venture was to construct and own a 25,000 barrels per day fractionator process unit (BPSD) and associated equipment facilities located in Houston, Texas. *Id.* The Area Office also found that through the signed Refining Agreement (Agreement)

dated May 1, 2014, Bayview hired Appellant, an eligible HUBZone small business, to run the facility including the purchase of certain materials necessary to the refining process (Feedstocks (light sweet crude oil) for conversion), the creation of Products, and the sale and delivery of said Products to third parties, including fulfilling HUBZone qualified government contracts. Based on the terms of the Agreement, the Area Office noted that Appellant was reimbursed by Sunoco for all operational, management, and marketing expenses. In addition, Appellant agreed to purchase crude oil from Sunoco (The Crude Oil Sales Agreement; Contract No. 718314). The parties operated under this agreement until a contract dispute arose. Subsequently, on September 20, 2021, Sunoco filed a request for an injunction against Appellant in the District Court of Harris County Texas alleging breach of contract. Subsequently, on October 12, 2021, through a buy sell agreement, Appellant sold its 51% membership interest in Bayview to Sunoco. Bayview is now 100% owned by Sunoco. As part of the transaction, both parties signed a Refinery Lease Agreement at the Closing (October 12, 2021). *Id.*

The Area Office found that after taking full ownership of Bayview, Sunoco hired Appellant as a HUBZone certified concern, to manage its facility. Later, Sunoco and Appellant executed a Second Amended and Restated Refinery Lease Agreement dated September 25, 2023 (Refinery Lease Agreement). *Id.*

The Area Office observed, based on the information submitted in response to the size protest, the Refinery Lease Agreement is the current contractual agreement between the parties. (*Id.* at 6.) The Area Office also found that both the Refining Agreement (2014) and the Refinery Lease Agreement (2023) show that Appellant has similar responsibilities regarding operations before and after the sale of Bayview. Specifically, Appellant is performing operation management and maintenance service of the facility; purchasing the crude oil from Sunoco (or its affiliated firm); converting Feedstocks into Products through a refinery process; and is reimbursed by Sunoco for the expenses incurred while operating the facility. Sunoco has established new restrictions on Appellant to guardrail its performance and compliance demonstrating that they have the power to control Appellant.

Furthermore, the Area Office concluded that according to the terms of the agreement between Bayview and Appellant, Appellant is economically dependent on Bayview. The Lease Agreement requires that:

> · Petromax shall ensure that all Covered Revenue (all revenues recognized by any member of the Petromax Group arising from the sale, exchange or any disposition of any and all Feedstocks and Products both at the Facility and any offsite third-party terminal) is deposited by third parties directly into the Bayview Bank Account, unless otherwise directed by Bayview. (*Performance Standards; Covenants 4(c)(iii)*).
>
> · In the event Petromax becomes aware that a counterparty to a Product Sales Agreement intends to terminate, or not renew, such agreement, then Petromax shall provide prompt written notice to Bayview. (*Performance Standards; Covenants 4(c)(iv)*).

· Petromax shall not enter into, amend or terminate an agreement with a third party for the storage and handling of Feedstocks and Products unless, concurrently with such execution, Bayview's lien rights in the Feedstocks and Products are confirmed by such third party in writing in a form acceptable to Bayview. (*Performance Standards; Covenants4(c)(vi)*).

· Bayview shall be provided with electronic access to any bank accounts owned by any member of the Petromax Group that is used to conduct business related to the Facility, the Services, the Feedstocks or the Products. (*Performance Standards; Covenants 4(c)(viii)*).

· Petromax shall advise Bayview in writing prior to amending, replacing or otherwise modifying any safety, health, environmental, operating or other manuals or standards. (*Performance Standards; Covenants 4(c)(ix)*).

· Petromax shall provide Bayview with written notice for purchases and sale of Feedstocks and Products. (*Performance Standards; Covenants 4(c)(x)*).

· Petromax shall not create, incur or assume any indebtedness for borrowed money or cause any lien or other encumbrance to be placed on the Feedstocks or the Products, without the prior written consent of Bayview. (*Performance Standards; Covenants 4(d)*).

· In addition to any lien or security interest in favor of Bayview established by statute and/or Common Law, including without limitation a statutory warehousemen's lien and Common Law bailment lien, Petromax grants to the Bayview Group a **first priority lien and security interest** on all Feedstocks and Products stored or handled at the Facility or any third party facility. . . . **Bayview may foreclose on such lien in accordance with the process established under Applicable Law**. Petromax shall cooperate with any attempt by the Bayview Group to perfect or execute on the liens described above including, but not limited to, (1) delivering notices to third parties informing them of the Bayview Group's lien and security interest, and (2) entering into agreements with third parties related to the Bayview Group's lien rights as reasonably requested by the Bayview Group. (*Performance Standards; Covenants 4(f)*).

. Petromax shall at all times procure insurance against damage to or loss of the Feedstocks or Products. Such insurance shall (i) be written through insurance companies licensed to do business in the State of Texas that are **reasonably acceptable to Bayview**, and (ii) contain limits of liability and property loss coverage of at least $25,000,000. **Additional insured status shall be provided in favor of Bayview for all insurance procured by Petromax pursuant to this Agreement. . . . (*Performance Standards; Covenants 4(g)*)**.

(Size Determination, at 6-7.)

The Area Office found that all of Appellant's revenues are directly deposited into Bayview's bank account, which demonstrates its reliance on Bayview to operate. Bayview has established a Credit Line to allow Appellant to purchase Feedstocks from Sunoco's affiliate and other approved third parties. The Area Office found that Bayview controls the Credit Line and Appellant is limited to the drawings it can make and is only entitled to draw to purchase Feedstock. Specifically, if Appellant wants to purchase Feedstocks from a party other than Sunoco or its affiliated firm, Appellant is required to get a pre-approval from Bayview to make a purchase. Any modification to the credit limit is at Bayview's sole discretion. (*Id.*, at 7.)

The Area Office determined that in addition to Appellant's Credit Line, Bayview also provides funds to pay Appellant's operational expenses. Further, if the actual direct expense costs incurred by Appellant related to the Facility exceed the funds given, only Bayview has the authority to determine if an increase is appropriate. (*Id.*)

The Area Office found that although Appellant is a fuel refiner, it does not own any of the necessary equipment. Bayview owns the processing unit and associated equipment and facilities. Additionally, Appellant acknowledges that the only location at which it refines products is the Bayview location. Appellant relies on Bayview's agreement to refine the products and deliver them to its customers. Furthermore, under the terms and conditions of the Refinery Lease Agreement, Bayview has the power to unilaterally terminate the agreement for any reason, or for no reason, and is only required to provide thirty (30) days' prior written notice to Appellant. (*Id.*)

Also, upon termination of the agreement title, inventory, and accounts receivables held by Appellant immediately reverts to Bayview. The Area Office concluded, based on the information provided above and the totality of the circumstances, Bayview and Sunoco have the power to control or control Appellant. Also, Bayview is 100% owned by Sunoco, thus, Appellant is also affiliated with Sunoco, which is a well-known large business and a part of SUNOCO, LP (NYSE: SUN). The Area Office concluded that the average number of employees for Appellant and its affiliates exceed the applicable size standard of 1,500 employees of 200,000 barrels/day, and so Appellant is an other than small business. (*Id.*)

D. Appeal

On June 20, 2025, Appellant filed the instant appeal. Appellant argues the Area Office erred in finding Appellant other than small, and the Area Office's analysis and conclusions are factually incorrect and contrary to applicable law and regulation.

Appellant first argues that although its lease agreement is titled a “Refinery Lease Agreement,” the Lease is better understood as a consolidated lease and financing agreement. (Appeal at 9.) Appellant contends that the Lease provides Appellant the exclusive right to utilize the Facility. The entire Facility is leased to Appellant for its processing of Feedstock into Products. Second, the Lease establishes a credit line to purchase Feedstock. The Feedstock can be purchased from ETM or a third-party supplier. Appellant is not required to use the Bayview Group credit line, nor is Appellant required to purchase ETM Feedstock. (*Id.* 9-10.) Indeed, Appellant regularly utilizes the Bayview Group credit line to purchase Feedstock from non-ETM

suppliers, with approximately 42% of Appellant's Feedstock coming from non-ETM suppliers. (*Id.* at 10.) Although the Area Office requested additional information during the review process, Appellant argues that the Area Office never inquired about whether Appellant actually obtains Feedstock from non-ETM suppliers or "if, as the Area Office incorrectly implies, Appellant is chained to solely purchasing ETM Feedstock when using the Bayview Group credit line." (*Id.*) *6 Appellant contends the Area Office fundamentally misconstrues the relationship between Appellant and Bayview at its most basic level. The Area Office views the Lease as Sunoco "hiring" Appellant to "manage the facility." However, Appellant is in the business of processing Feedstock and selling the resulting products. Appellant further contends that the fact that it rents the Facility does not make it a manager on behalf of or for the benefit of Sunoco or Bayview. (*Id.*)

Rather, Appellant maintains that as is common in most industries (especially capital-intensive industries such as refining crude oil), instead of tying up capital in fixed assets (such as land and machinery), the Company has leased facilities adequate for performance of its business. There is nothing in a market-based arm's-length lease that is inherently suggestive of control. The mere fact of a lease "provides no basis to find power to control" by the lessor. Furthermore, there is no analysis nor argument by the Area Office that the Lease is anything other than an arm's-length agreement that provides a fair market value lease payment to Bayview. (*Id.* at 10-11, citing *Size Appeal of Rio Vista Mgmt., LLC*, SBA No. SIZ-5316, at 11 (2012); *Size Appeals of Ferguson-Williams, Inc. and R&D Maintenance Serv., Inc.*, SBA No. 2060 (1984).) Indeed, the footnote for NAICS code 324110 contemplates a refiner leasing processing facilities, as Appellant does. (*Id.* at 11.)

Appellant argues that contrary to the Area Office's assertions, Appellant is not financially dependent upon, nor is it controlled by Bayview. As with most businesses, Appellant is arranging financing for its operations. In this case, Appellant asserts it is utilizing its Bayview Group credit line to purchase Feedstock from ETM and non-ETM suppliers. Ultimately, however, Appellant's operations are funded by the revenue it generates by selling the Products. The revenue from Appellant's sales goes towards repaying the credit line, paying Appellant's overhead and other costs, and paying the Lease Amount. Appellant contends Bayview Group does not give money to Appellant, but instead loans money to Appellant, which is paid back with interest. (*Id.*)

The arrangement includes commercially reasonable terms such as payment of interest by the borrower, security interest and other protections to mitigate the lender's risk, a credit limit set by the lender, and the lender requiring reasonable documentation for Feedstock purchases before making payment. (*Id.* at 11-12). Appellant notes that as repeatedly recognized by OHA, it is commercially reasonable for lenders to protect their interests, and affiliation does not naturally flow from lenders doing so. (*Id.* at 12, citing *Size Appeal of Alex-Alternative Experts, LLC*, SBA No. SIZ-4974 (2008); *Size Appeal of Lukos, LLC*, SBA No. SIZ-6047, (2020); *Size Appeal of Lajas Industries, Inc.*, SBA No. SIZ-4263 (1997).)

Furthermore, Appellant asserts that the aspects of the Lease which the Area Office finds offensive to Appellant's control are, in fact, commercially reasonable credit terms that do not provide Bayview control over Appellant. (*Id.* at 13.) Instead of having separate documents, such

as promissory notes, security agreements, etc., the Lease combined the lease of the facility along with typical credit terms and lender protections. (*Id.*)

Appellant asserts that the payment of its revenue (i.e. Covered Revenue) into Bayview's bank account is a risk mitigation method to ensure repayment of the loans and to secure collateral. (*Id.*) The Lease provides a detailed account of how the Covered Revenue is to be applied. The money earned by Appellant pays for, as the terms are defined in the Lease, Appellant's Costs, the purchase of Feedstock, Appellant's Revenue, Excise Taxes, and Lease Amount. Appellant asserts Bayview does not have the authority to decide how much to pay Appellant from Appellant's revenue; rather, the arrangement protects both the borrower (Appellant) and the lender (Bayview) by clearly establishing the allotment of funds. (*Id.*) This is no different than the common arrangement with banks acting as an escrow agent for funds (i.e. a lockbox account) that are then distributed to a prime contractor and a lender in pre-agreed amounts or percentages. Indeed, OHA has held that assigning receivables (here, the Covered Revenue) to a supplier is unobjectionable. (*Id.*, citing *Size Appeal of Cal Western Packaging Corp.*, SBA No. SIZ-2269 (1985).)

Furthermore, Bayview having "electronic access" to Appellant's bank account is not suggestive of control. (*Id.* at 13-14.) Bayview's access is limited to viewing Appellant's bank account to ensure loaned funds are being utilized as intended, consistent with the Feedstock supplier sales agreements against which the loans were made. (*Id.* at 14.) Bayview has no legal, contractual, nor actual right or ability to withdraw funds, transfer funds, or do anything else within Appellant's bank account. Bayview's access is limited to viewing transactions (i.e. deposits, withdraws, transfers, balances) in furtherance of its risk mitigation as a lender.

Appellant maintains the sole basis for the Area Office finding of affiliation between it and Bayview was the totality of the circumstances. (*Id.*) The issue is whether Bayview can control Appellant's day-to-day management and long-term decision making. Appellant argues that a reasonable review of the evidence results in a resounding no on this question. Rather, the record shows Appellant solely manages its own daily and long-term business. Appellant asserts that the Lease is clear, Appellant is solely responsible for operating its business. Consistent with Appellant's business of refining Feedstock, the Company is responsible for (1) maintaining the Facility in working order; (2) sourcing Feedstock; (3) providing for the marketing and sale of the Products manufactured by Appellant at the Facility; and (4) providing all back office, contract administration, compliance, and accounts receivable and payable services to operate the Facility. Appellant further asserts that it sources the inputs (i.e. Feedstock), manufactures the Product, finds the customer for the Product, delivers the Product, invoices the customer, and manages the entire process. (*Id.* at 15.) Appellant states that simply because the Bayview Group provides funding or that to secure such funding, customer payments are deposited into Bayview's bank account, does not diminish Appellant's control over its operations.

Appellant observes the Area Office did not argue Bayview or Sunoco have any ownership interest in Appellant. Likewise, the Area Office did not argue that Bayview or Sunoco manage the daily operations of Appellant. Appellant maintains that the Area Office provided no meaningful evidence of any day-to-day or long-term control exerted by Bayview. Instead, the Area Office pointed to the commercially reasonable and legally unobjectionable credit line and

risk mitigation procedures contained in the Lease. However, as discussed above, each of the "issues" identified by the Area Office fail, individually and collectively, to demonstrate control. Additionally, Appellant sells no Products to Bayview and, therefore, none of the Company's revenue is derived from Bayview. Appellant claims that it is successful because it sells the Products to third parties, such as DLA, not because of any revenue generated from Bayview. Furthermore, Appellant asserts that it has the right to profit from its efforts and bears the risk of loss. For instance, § 5.e. of the Lease provides that the title and risk of loss of Feedstocks and Products always remain with Appellant. Moreover, it is up to Appellant whether it makes a profit or loss. Appellant determines the price for the Products it sells to its customers and negotiates the rates it pays for its Feedstock. (*Id.* at 16.) Appellant's Revenue (as defined in the Lease) can be positive or negative. Thus, Appellant reaps the reward of successfully operating the Company and bears the risk if it fails to do so. The totality of circumstances does not support the Area Office's finding of affiliation upon which it based the Size Determination. Appellant is in control of the core of its business, its ultimate product, and its primary task (i.e. manufacturing and selling the Products). (*Id.*)

Appellant concludes that for the reasons stated above, the Size Determination was based on clear errors of law and facts and should be reversed. Alternatively, Appellant requests the matter be remanded to the Area Office for further development of the record and a new size determination. (*Id.*)

III. Discussion

A. Standard of Review

Appellant has the burden of proving, by a preponderance of the evidence, all elements of the appeal. Specifically, Appellant must prove the size determination is based upon a clear error of fact or law. 13 C.F.R. § 134.314. OHA will disturb an area office's size determination only if, after reviewing the record, the administrative judge has a definite and firm conviction that the area office erred in making its key findings of fact or law. *Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 11 (2006).

B. Analysis

Appellant has not shown that the Area Office erred in finding Appellant an other than small business. I must therefore deny the appeal.

SBA determines affiliation between concerns and entities when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. 13 C.F.R. § 121.103(a)(1). It does not matter whether control is exercised, so long as the power to control exists. *Id.* SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. 13 C.F.R. § 121.103(a)(2). Affiliation may be found where an individual, concern, or entity exercises control indirectly through a third party. 13 C.F.R. § 121.103(a)(4). In determining whether affiliation exists, SBA will consider the totality of the circumstances and may find affiliation even though no single factor is sufficient to constitute affiliation. 13 C.F.R. §

121.103(a)(5). Pursuant to SBA regulations, a concern's former affiliates are excluded from the size determination "if affiliation ceased before the date used for determining size." *See* 13 C.F.R. §§ 121.104(d)(4) and 121.106(b)(4)(ii).

Here, the Area Office found Appellant affiliated with Bayview, and thus its 100% owner Sunoco, under the totality of the circumstances rule. In order to find affiliation through the totality of the circumstances, "an area office must find facts and explain why those facts caused it to determine one concern had the power to control the other." *Size Appeal of TelaForce, LLC*, SBA No. SIZ-5970 (2018) (quoting *Size Appeals of Med. Comfort Sys., et al.*, SBA No. SIZ-5640, at 15 (2015)). Concerns may be found affiliated under the totality of the circumstances if "the interactions between the businesses are so suggestive of reliance as to render the firms affiliates. . . . Although the evidence in the record may not establish affiliation under one of the specific factors enumerated in the regulation, a review of all the factors may lead to the conclusion one business has power to control the other and, thus, both are affiliated." *Size Appeal of Diverse Construction Group, LLC*, SBA No. SIZ-5112, at 5 (2010). The Area Office properly found no affiliation with these concerns as former affiliates, and did not base its decision upon that, although it did discuss the concerns' past history with each other at length. OHA has repeatedly held that historic ties between a challenged firm and an alleged affiliate do not establish current affiliation when the historic ties no longer exist as of the date to determine size. *Size Appeal of OBXtek, Inc.*, SBA No. SIZ-5451, at 12 (2013) ("So long as affiliation ceases before the date for determining size, the firms are former affiliates, and their receipts will not be aggregated.")

OHA has held that financial assistance in the form of loans can afford a lending concern the power to control the borrower concern and is a factor to support a finding of affiliation under the totality of the circumstances rule. *Size Appeal of National Security Associates, Inc.*, SBA No. SIZ-5907 (2018); *Size Appeal of Heritage of America, LLC*, SBA No. SIZ-5017, at 5 (2008). Firms may be found affiliated where, as here, the conditions of the loans demonstrate a financial dependence by one firm on the other. *Size Appeal of Lajas Industries, Inc.*, SBA No. SIZ-4263, at 7 (1997). Reliance upon a larger firm's infrastructure is also one factor that can support the finding of affiliation. *Size Appeal of Faison Office Products, LLC*, SBA No. SIZ-4834, at 15 (2007)

Here, Appellant leases its place of business, and all its equipment from Bayview. It also receives its financing entirely from Bayview, and all its funds are deposited in Bayview's bank account. Appellant will not enter into an agreement with a third party for storage and handling of Feedstocks; Bayview has electronic access to Appellant's bank accounts

On appeal, Appellant argues that the Area Office never inquired about whether Appellant obtained Feedstock from non-ETM suppliers. Section II.D., *supra*. It does not matter whether Appellant purchases Feedstock from ETM or a non-ETM (third-party) supplier. Rather, the focus is on the conditions and financial limitations under which Appellant purchases the Feedstock. To purchase Feedstock, Appellant solely uses the Bayview credit line. Section II.D., *supra*. According to the Lease, Appellant has the exclusive right to utilize the facility and Bayview credit line to purchase Feedstock. Additionally, all revenue is placed in a Bayview bank account, which gives Bayview oversight over Appellant's revenue, with the potential to control it.

Appellant also argues that the Area Office fundamentally misconstrues its relationship with Bayview, and that it was not hired to manage Bayview's facility. However, Appellant has leased space and all the necessary equipment from Bayview, in which it processes Feedstock and sells the resulting products for Bayview. Although I agree with Appellant that merely renting a space does not by itself constitute control, Appellant is undoubtedly financially dependent on Bayview to run its business, thereby resulting in control.

Appellant must ensure all Covered Revenue is deposited by third parties directly into the Bayview account. Appellant must notify Bayview if a counterparty will not renew or terminate an agreement. Appellant must obtain Bayview's permission to purchase Feedstocks from any party other than Sunoco. Appellant cannot enter into an agreement for storage and handling of Feedstocks unless the counterparty confirms Bayview's lien rights in writing. Bayview has electronic access to all of Appellant's bank accounts used to conduct business at the facility. Appellant must notify Bayview in writing of any amendment to safety, health, environmental or other operating standards. Appellant will provide Bayview with written notice of any purchase and sale of Feedstocks or products. Appellant will not incur any indebtedness without Bayview's prior written consent. Appellant must insure the Feedstocks and products, under terms acceptable to Bayview. Further, Bayview has a first priority lien on all Feedstocks or products stored or handled at the Facility or at any other location.

All of these factors lead to the conclusion that Bayview has control over Appellant. Appellant is reliant upon Bayview for financing; it uses Bayview's infrastructure and equipment for its operations. Appellant must get permission from Bayview for routine business decisions that are not related to the financing. If Appellant was not controlled by Bayview, it would not be required to document both ETM and non-ETM suppliers' Feedstock purchases. *Id.* Not only does Bayview control Appellant's lease and credit limit, but Bayview also controls Appellant's management and finances. Bayview financially controls Appellant by having electronic access to Appellant's bank account to ensure that "loaned funds are being utilized as intended." Section II.D., *supra*. Not only does Appellant have to place all its revenue into Bayview's bank account, but Bayview also has direct access to Appellant's bank account and its data.

Bayview has control over much of Appellant's day-to-day management. Appellant is not solely responsible for operating its business. Moreover, Appellant is required to market and sell the products, as well as provide administrative and compliance support to operate Bayview's facility. Section II.D., *supra*.

After reviewing the record, I conclude that Appellant has failed to establish that the Area Office erred in concluding Appellant was affiliated with Bayview and Sunoco, Bayview's sole shareholder, under the totality of the circumstances. Accordingly, I must affirm the size determination that Appellant is an other than small business.

IV. Conclusion

Appellant has not shown that the Area Office's size determination was based upon any error of fact or law. Accordingly, the appeal is DENIED, and the size determination is AFFIRMED. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN
Administrative Judge