

As demonstrated above, the HRA underestimates the concentration of toxic compounds that will be present in hazardous wastes that ISOCI proposes to accept and thus significantly underestimates cancer risk to the surrounding community. Independent expert analysis shows that the HRA underestimates incremental cancer risk from the Project by more than 2000%. The estimated cancer risk of  $2.43 \times 10^{-5}$  greatly exceeds both the standard one per million standard regulatory threshold and the 10 per million threshold inappropriately used in the HRA. DTSC must correct the speciation profiles as described above and have the HRA revised to accurately estimate cancer risk resulting from toxic compounds that will be present in hazardous wastes accepted at the facility.

#### **B. Evaluation of Health Risk of Proposed Activities Compared to Health Risk of Current Activities**

In Comment 4-93, CBE stated that the HRA does not calculate the additional health risk associated with the proposed activities at the facility, as compared to the health risk associated with current activities. In its Response to Comment 4-93, DTSC acknowledges that “the HRA did not calculate existing health risk[s] and compare them to health risks associated with the ISOCI expansion.” Without this calculation, it is impossible for members of the public or DTSC to properly understand and evaluate the additional health risk that will be imposed on the surrounding community by proposed expansion of the facility. DTSC must prepare a revised HRA that includes calculations of the additional health risks resulting from the proposed activities compared to the health risks from current activities.

It remains unclear from DTSC’s Response to Comment 4-93 whether heated processes are proposed as part of the facility expansion. DTSC asserts that “[n]o steam injection or distillation activities are proposed at the ISOCI facility.” However, both the HRA and Final EIR state that these processes are part of the “proposed facility operations.” See HRA page 9 and Final EIR 2-18 (oil treatment system) and HRA page 11 and Final EIR 2-16 (glycol recovery system). DTSC must clarify which heated processes, if any, are proposed for the facility and whether appropriate emissions estimates for those processes have been included in the HRA.

#### **C. Evaluation of Risk from Additional Wastes**

In Comment 4-95, CBE noted that the HRA generalizes the types of wastes that could be accepted by the facility in the future and underestimates the types and quantities of VOCs and SVOCs that could be emitted from the facility. In its Response to Comment 4-95, DTSC acknowledges that the HRA does not include chemicals of concern for which there were no health data. By attributing zero risk to these chemicals, the HRA underestimates the risk of new wastes that could be accepted after the proposed expansion of the facility. The HRA further underestimates the risk of new wastes by not assessing the impact of routine and accidental releases of the many new hazardous waste streams that will be accepted at the facility.

As noted by CBE in Comment 4-99, the HRA fails to assess the risk of the proposed activities on the large planned mixed-use redevelopment at the 23.5 acre Sears Roebuck & Co. Tower

property located near the facility. In its Response to Comment 4-99, DTSC only refers to its Response to Comment 2-9, which addresses the cancer risk assuming a residential exposure at the Sears Tower property. The HRA fails to evaluate non-cancer health risks that will be imposed on future residents and workers at the mixed-use development that is planned for the Sears Tower property.

#### **D. Risk from Failure and Upset Scenarios Evaluation**

In Comment 4-97, CBE noted that the HRA is flawed because it fails to address several potential failure scenarios, such as pipe line breaks, hose disconnects during fluid transfer, tank leaks, rail car derailment, and overheating "hot" processes. Other serious mechanical and equipment failures or human error could result from an earthquake or from vandalism or sabotage. In its Response to Comment 4-97, DTSC does not address any of these potential failure scenarios, and the HRA does not include any analysis of the increased health risks from such scenarios. In fact, in its Response to Comment 6-2, DTSC acknowledges that the HRA only evaluates the impacts of emissions from the facility "associated with routine operations." The CEQA Guidelines state that "[w]hile foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can." CEQA Guidelines § 15144. The HRA's stated purpose is to assess the potential impacts associated with the emissions of toxic air contaminants from the facility. The assessment cannot be accurate if it excludes risk from foreseeable exposure scenarios. Given ISOCI's past compliance record it is foreseeable that releases will take place that are not just those "associated with routine operations". Accordingly, the HRA must be revised to evaluate the risk from the specific failure and upset scenarios identified by CBE.

In its response to Comment 4-97, DTSC refers to sections of the DEIR that discuss upset or accident scenarios during transportation of hazardous waste to or from the facility by truck and rail. As CBE observed, every time hazardous waste is moved, opportunities arise for accidental release. Chapter 3 of the Final EIR estimates that the existing truck accident rate for the facility is less than one per year, based on 45 trucks per day transporting waste to the facility. This accident risk would double due to the increase in truck traffic estimated for the proposed expansion of the facility. A truck accident could occur at or near the facility, or on any of the high-volume and congested freeways or roadways used by independent waste haulers, and can be expected to result in release of hazardous waste from the truck. See Hazardous Materials Accident Report for Overturn of a Tractor-Semitrailer (Cargo Tank) with Release of Automotive Gasoline and Fire, Carmichael, CA, Feb. 13, 1991, NTSB Number HZM-91/01, summary available at <<http://www.nts.gov/publicctn/1991/HZM9101.htm>>. Although the EIR discusses these and similar issues for the risk posed by a rail transportation accident, the HRA does not include any analysis of the increased health risks from these potential upset or accident scenarios. The HRA must be revised to include an assessment of risk from failure and upset scenarios.

### **E. Risk of Catastrophic Release Evaluation**

The HRA fails to evaluate the risk of a catastrophic release of hazardous waste resulting from an event such as a major earthquake, vandalism, terrorism, or a serious rail car accident that released hazardous waste outside the secondary containment system. As discussed elsewhere in this Petition, California courts require that an EIR evaluate the risk of such a foreseeable catastrophic event for a hazardous waste facility, even if the likelihood of its occurrence is low. *See Residents of Sanborn Court v. DTSC*, No. 95CS01074 (Sacramento Superior Court April 1, 1996) (granting petition for writ of mandate and requiring DTSC to prepare an EIR specifically to evaluate the impacts of a catastrophic release of hazardous waste or hazardous materials). The HRA must be revised to include an evaluation of the risk from a catastrophic release of hazardous waste at or near the facility.

### **F. Consideration of Equipment Failures in Acute Effects Analysis**

The HRA includes an acute effects analysis for the inhalation pathway. However, the calculations for short-term effects of direct inhalation of vapors and particle phases of various chemicals of concern are based on maximum one-hour emission rates. DTSC has not explained why equipment failures or other facility problems could not result in uncontrolled emissions lasting longer than one hour. The HRA's acute effects analysis should be revised to include calculations based on a longer acute exposure.

### **G. Failure to Evaluate Risk From Mobile Sources**

According to Table 1 of the HRA, the facility currently receives 45 trucks and 5 rail cars per day and the number of trips will increase to 100 trucks and 10 rail cars per day under the proposed facility operations. According to the description of existing facility operations in the Facility Characterization section of the HRA, however, the facility receives only 5 rail cars per week. According to the description of proposed facility operations, the facility will receive 35 rail cars per week. These inconsistencies within the same document make it impossible to accurately evaluate how much rail car traffic at the facility will change under the proposed facility operations, although it is clear there will be a significant increase.

Regardless of the accuracy of the numbers in Table 1 of the HRA, it is clear that the number of truck and rail car trips to and from the facility will more than double. Most heavy-duty trucks and locomotives are powered by diesel engines and are significant contributors to air pollution because they emit diesel exhaust, which contains over 450 different components, including vapors, nitrogen oxides, and particulate matter. Over 40 chemicals in diesel exhaust are considered toxic air contaminants by the State of California, and diesel exhaust exposure has been linked in numerous scientific studies to cancer, the exacerbation of asthma and other respiratory diseases. An EPA report released in 1998 concluded that long-term (i.e., chronic) inhalation exposure to diesel exhausts, even at low levels, is likely to pose a risk of lung cancer and respiratory impairment. *See Health Assessment Document for Diesel Engine Exhaust*, U.S. EPA, Office of Research and Development, National Center for Environmental Assessment, EPA/600/8-90/057F, 2002, available at <<http://cfpub.epa.gov/ncea/>>. In August 1998, the State

of California listed the particulate matter in diesel exhaust as a toxic air contaminant, meaning it is a probable carcinogen requiring action to reduce public exposure and risk. According to the Multiple Air Toxics Exposure Study in the South Coast Air Basin (MATES-II) published in March 2000 by the South Coast Air Quality Management District, in Los Angeles County, 86% of added cancer risks are attributed to mobile source pollutants, and 78% of added cancer risks is attributed to diesel particulate emissions.

Despite the well-established health impacts from diesel emissions from trucks and rail cars and the significant increase in truck and rail traffic at the facility, the HRA inexplicably does not evaluate risk from mobile sources. DTSC must revise the HRA to include an evaluation of risk from mobile sources associated with the facility.

#### **H. Cumulative Risk Evaluation**

The HRA acknowledges that the facility is located in a heavily industrial area, but it does not account for current levels of exposure to benzene and other chemicals of concern that affect children and other sensitive receptors near the facility. Children living or attending school near the facility are surrounded by industrial facilities and are exposed to many sources of emissions in addition to ISOCI's facility. In Comment 4-94, CBE requested that DTSC evaluate the risk of increased rate of childhood cancers associated with proximity to oil storage facilities. In its Response to Comment 4-94, DTSC states that "no significant carcinogenic health impacts are expected" and that the "potential impacts suggested in this comment have been evaluated ... and concluded to be less than significant." However, the HRA fails to evaluate the cumulative effects of exposure to emissions from the facility's proposed operations combined with emissions from other nearby existing and future industrial facilities. Nor does the HRA address the severe carcinogenic impacts of a potentially uncontrollable fire involving the combination of ignitable waste and petroleum waste at the facility. DTSC must revise the HRA to evaluate cumulative risks on the surrounding community, which is already disproportionately affected by environmental impacts.

#### **I. Risk of Hydrogen Sulfide Exposure Evaluation**

In Comment 4-97, CBE stated that the HRA fails to address the risk of hydrogen sulfide exposure resulting from the proposed wastewater treatment process. In its Response to Comment 4-97, DTSC asserts without any supporting evidence that the proposed wastewater treatment process will not produce hydrogen sulfide emissions because petroleum processing will not occur at the facility. DTSC appears to be unaware that hydrogen sulfide can be produced by anaerobic bacteria in tank bottoms associated with the proposed wastewater treatment process. If the wastewater treatment unit's influent has variable organic content (which is likely), pH and chlorine levels will be unstable and difficult to control. Once these levels are unstable, organic solids accumulate and anaerobic bacteria can flourish and produce dangerous levels of hydrogen sulfide, which can be highly toxic and deadly. Such emissions might also result from a fire or other accident involving petroleum waste. DTSC must demonstrate that ISOCI and DTSC have properly evaluated the risk of such emissions.

## J. HRA Protocol

In Comment 4-96, CBE noted that the 1995 HRA Protocol does not discuss the current facility operations in comparison to the proposed operations and that DTSC's January 10, 1996 comments on the HRA Protocol indicated confusion about whether the HRA Protocol required evaluation of the proposed operations. In its Response to Comment 4-96, DTSC does not indicate what comments it prepared on the HRA Protocol, how the Protocol was changed to address DTSC's comments, or when the Protocol was modified. It appears that the HRA Protocol upon which the HRA was based is fundamentally flawed and outdated because it did not require the HRA to address various risks that will result from the proposed operations. Furthermore, since the HRA Protocol was prepared more than ten years ago, the toxicological data used to select constituents of potential concern ("COPC") for the waste streams is outdated. The COPC selection in the HRA Protocol must be updated to include more recent toxicological data from OEHHA, IRIS and HEAST.

In its Response to Comment 4-98, DTSC misleadingly states that EPA's Human Risk Assessment Protocol (HHRAP) "has eliminated the dermal absorption pathway from consideration because exposure via this pathway does not contribute a substantial risk to exposed individuals." The HHRAP was finalized by EPA in 1995. It appears that the HRA Protocol was based on the draft HHRAP published in 1998, and that the HRA Protocol was not updated, reviewed, or revised to reflect changes in the finalized HHRAP. Chapter 6: Quantifying Exposure, Section 6.2.3 of the HHRAP states:

Soil ingestion, dermal exposure to soil, and inhalation of re-suspended dust are potential soil exposure pathways. For the purpose of RCRA combustion permitting decisions, we recommend considering soil ingestion. However, we currently only recommend evaluating dermal exposure to soil and inhalation of re-suspended dust if site-specific exposure setting characteristics support evaluating these exposure pathways.

Section 6.3.1 provides:

For the purpose of RCRA combustion permitting decision, we don't typically recommend evaluating dermal exposure to COPCs through contact with soil. However, site-specific exposure setting characteristics may support evaluating this exposure pathway.

Dermal exposure evaluation should not have been eliminated by DTSC simply because an outdated guidance document indicated that it was acceptable to eliminate this pathway. Rather, sound professional judgment relating to site-specific conditions should have been used to evaluate the potential for dermal exposure. DTSC must require ISOCI to develop a more current HRA Protocol that includes the dermal absorption pathway and an updated COPC selection, and then prepare a revised HRA that includes assessment of risk from this pathway.

Finally, although the cover sheet for the Final HRA is dated December 2006, it appears that the bulk of the HRA was prepared at least two years ago. Conditions in the surrounding community may have changed significantly over the past two years. DTSC must ensure that the HRA is updated.

### **K. Air Quality Modeling**

The HRA's air dispersion and deposition modeling relied on 1984 "surface air" meteorological data from Los Angeles Airport and 1984 "upper air" meteorological data from Oakland Airport, purportedly because "[Oakland Airport] was the only location available in the appropriate file format." The Los Angeles and Bay Area air basins are significantly different, and the data relied upon is more than 20 years old. The HRA's air quality modeling should be rerun using comparable and reasonably current data.

## **V. FINAL ENVIRONMENTAL IMPACT REPORT**

The Final EIR was finalized despite that fact that the document inaccurately describes the Project baseline, fails to evaluate a number of potentially significant environmental impacts altogether, underestimates other potentially significant impacts, does not ensure proper mitigation of impacts associated with the Project, and fails to evaluate a reasonable range of alternatives. Therefore, the Final EIR must be decertified and a revised DEIR must be prepared and recirculated. *See* Public Res. Code § 21092.1. *See also Save our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99.

CEQA requires that a lead agency recirculate an EIR "[w]hen significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification." CEQA Guidelines § 15088.5. Here, the Final EIR never should have been certified because the comments submitted by CBE, CCAT, and other members of the public raised significant issues, new information, and potential environmental impacts that were not evaluated or discussed in the DEIR or the Final EIR. "Significant new information" requiring recirculation includes, for example, a disclosure showing that the DEIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. *See id.* That is the case here. The Final EIR must be decertified, a revised DEIR must be prepared that addresses the issues raised herein, and the revised DEIR must be recirculated for public comment.

### **A. Failure to Evaluate Impact from Catastrophic Release from Rail Cars**

The Final EIR fails to analyze the impacts from a catastrophic release of hazardous waste from one or more rail cars on the rail spur or on the rail line in the vicinity of the facility. A catastrophic release could result from many factors, including an earthquake causing railcars to tip over, a derailment from collision or other type of accident while rail cars are in transit that causes rail cars to tip over or rupture, an explosion in a rail car resulting from a chemical reaction, failure of a rail car due to deterioration or faulty repair, or an act of vandalism or

terrorism. Such a release from a rail car could cause serious harm or death to both nearby residents and ISOCI employees, as well as environmental harm.

The Final EIR acknowledges that ISOCI is in a seismically active region and it is highly probable that the Los Angeles area will be affected by future earthquakes. The region includes nine known faults that are potential sources of strong ground-shaking. The EIR states that each of these faults has the potential to cause an earthquake of magnitude 6.8 on the Richter scale or greater. The EIR further states that the "proximity of major faults to the ISOCI facility increases the probability that an earthquake may affect the ISOCI site and new project facilities. There is potential for damage to the ISOCI facilities in the event of an earthquake." The "Homeowners' Guide to Earthquake Safety" (California Seismic Safety Commission) shows that ISOCI is in Seismic Zone 4, which is the most dangerous zone for potential earthquake danger. It also is possible there are unknown earthquake faults in the area, as demonstrated by the 1994 Northridge earthquake, which occurred along a previously undiscovered fault. The significant risk of major earthquake to cause rail cars to tip over and release hazardous waste is real and must be evaluated by DTSC.

A derailment or other accident while rail cars are in transit could result in a catastrophic release of hazardous waste. The changes to the ISOCI Permit that allow acceptance of more waste codes will increase rail traffic to the facility. The EIR states that ISOCI estimates that 1,820 railcars will arrive at or depart from the facility each year once storage and transfer on the rail spur begins. This increase in rail traffic will dramatically increase the risk of rail car derailments due to collision or other accidents.

The danger associated with rail cars containing hazardous waste is reflected by the U.S. Department of Transportation's ("DOT") pending request for data to improve the safety of railroad tank cars. Specifically, DOT's Pipeline and Hazardous Materials Safety Administration ("PHMSA") issued a Federal Register notice in December 2006 (71 FR 67015) requesting input to "enhance the safe transportation of hazardous materials in tank cars." The PHMSA is requesting data concerning new designs and materials for improved accident and derailment survivability of hazardous materials in tank cars, improved tank car puncture resistance, design of tanks cars to withstand extraordinary events, improved braking to help prevent derailments, and better design of tank car fittings, valves and safety systems.

On January 18, 2007, the U.S. Senate Committee on Commerce, Science and Transportation held an oversight hearing on federal efforts for rail and surface transportation security. During the hearing, the problem of highly hazardous chemical rail tankers in urban areas was listed as the Transportation Security Administration's second-biggest threat to surface transportation. See Exhibit E ("Rail Tankers Pose Threat of Massive Destruction," Erik N. Nelson, *Contra Costa Times*, Jan. 29, 2007). The PHMSA's request and the hearing indicate that rail tank cars carrying hazardous waste have not been constructed as safely as possible and pose significant risk to communities near rail lines on which hazardous waste is transported. This is consistent with a report issued by the Federal Railroad Administration, which found that most severe hazardous materials releases tend to result from loss of a tank car's structural integrity, either

suddenly in an accident, impact, or derailment, or gradually due to damage accumulated in normal service. See Five-Year Strategic Plan for Railroad Research, Development, and Demonstrations, U.S. DOT, Federal Railroad Administration, March 2002, available at <<http://www.fra.dot.gov/us/content/225>>.

DOT's PHMSA, the National Transportation Safety Board ("NTSB"), and the Federal Railroad Administration track hazardous materials incidents involving rail transportation. Research into rail transportation accidents reveals that rail incidents involving a release of hazardous materials occur with regularity. For example, from 2000 to 2006, the Federal Railroad Administration reported 211 rail incidents involving release of hazardous materials, which resulted in the release of hazardous materials from a total of 375 rail cars and evacuations of over 80,000 persons.

A chemical reaction in a rail car causing an explosion and rail car tank rupture is not mere speculation at ISOCI due to the hundreds of additional hazardous waste codes that the facility will be able to accept. Incompatible wastes easily could be combined accidentally in a rail car causing a chemical reaction. Following are examples of incidents involving hazardous wastes and explosions in rail cars recorded by the NTSB.

September 13, 2002: A 24,000 gallon rail car containing 6,500 gallons of hazardous waste catastrophically ruptured at a transfer station in Freeport, Texas. As a result of the incident, 28 people suffered minor injuries and residents living within one mile of the incident had to shelter in place for more than five hours. The rail car and transfer station were destroyed. The force of the explosion propelled a 300-pound tank car dome housing approximately 1/3 mile. The NTSB determined that the cause of the rupture was over-pressurization of the hazardous waste material causing a runaway exothermic decomposition reaction. The over-pressurization occurred because the rail car had been heated to facilitate removal of its contents.

February 18, 1999: A 20,000 gallon rail car catastrophically ruptured while at an unloading rack at a cement plant in Clymers, Indiana. The incident resulted in temporary evacuation of residents of 100 nearby homes to shelters. The cement plant sustained significant property damage, the rail car was destroyed, and other nearby rail cars were damaged including one that was blown over onto its side. Four fixed storage tanks containing fuel and fuel blending agents were destroyed and other nearby storage tanks were damaged. The NTSB determined that the cause of the rupture was over-pressurization from a chemical self-reaction and expansion of waste that was initiated and sustained by a localized overheating of the tank car.

February 7, 1996: A rail car failed and separated into two halves, spilling 8,000 gallons of carbon disulfide. As a result of the spill, 500 people were evacuated from the area and five people were sent to the local hospital. The NTSB determined that the cause of the tank failure was a poorly performed retrofit and brittleness of the tank steel, which promoted rapid propagation of an overstress fracture that led to an almost complete separation of the rail car tank.

The Final EIR does not analyze the risks of any scenario involving a catastrophic release from rail cars at or near the facility. As demonstrated by the examples above, such an event could be devastating. Under California law, an EIR must evaluate the risk of a foreseeable catastrophic

event for a hazardous waste facility, even if the likelihood of its occurrence is low. See *Residents of Sanborn Court v. DTSC*, No. 95CS01074 (Sacramento Superior Court April 1, 1996) (judgment granting petition for writ of mandate). In 1996, the Pure-Etch facility, a proposed hazardous waste TSDF in Salinas, California, was required by the Sacramento Superior Court to prepare an EIR “addressing the impacts of a catastrophic release of hazardous waste or hazardous materials to the environment.” *Id.* at 3. Pure-Etch had planned to receive and ship large quantities of hazardous waste and hazardous materials to and from its facility in railcars. However, the risks of a catastrophic release to the surrounding community from the proposed handling of hazardous waste had not been analyzed. Residents of the community brought suit because DTSC failed to prepare an EIR despite substantial evidence demonstrating that the project had a potential to cause significant environmental effects and could seriously threaten the health and safety of workers and nearby residents. The court granted a petition for writ of mandate and required DTSC to set aside adoption of a mitigated negative declaration and prepare a focused EIR. The court defined “catastrophic release” as one which “has the potential to cause serious injury, serious illness, or death to one or more human beings in the event of its occurrence without regard to the likelihood of its occurrence.” *Id.* at 3, n.1. As with the community surrounding the ISOCI facility, the population around the Pure-Etch facility was low-income and primarily Spanish-speaking.

Evaluation of catastrophic events in the environmental review process also has been required under federal law. The U.S. Supreme Court recently declined to hear the appeal of the Ninth Circuit’s decision in *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission*, 449 F.3d 1016 (9th Cir. 2006), cert. denied 2007 U.S. Lexis 1028 (Jan. 16, 2007). In *San Luis Obispo Mothers for Peace*, the Ninth Circuit held that the environmental consequences of a potential terrorist attack on a nuclear facility must be considered in environmental review conducted under NEPA. The court ruled that it was unreasonable to categorically dismiss the possibility of a terrorist attack as “remote and highly speculative,” and that the agency was required to assess the risk even if it was unquantifiable.

In *San Luis Obispo Mothers for Peace*, petitioners had appealed the United States Nuclear Regulatory Commission’s (“NRC”) approval of PG&E’s petition to increase storage of spent radioactive fuel rods at its California Diablo Canyon Power Plant, based on NRC’s failure to analyze the environmental consequences of a terrorist attack on the Plant. In overturning the approval, the Ninth Circuit reasoned that the federal government’s massive expenditures to combat terrorism demonstrate the significance of terrorism concerns in government decisions. Therefore, it was unreasonable for NRC to categorically dismiss the possibility of a terrorist attack as “remote and highly speculative.” The court also found that since NRC had analyzed various release scenarios in other contexts in which the numeric probability of these occurrences could not be determined, NRC was clearly able to perform the same type of analyses for potential terrorist attacks. Finally, the court held that it was unreasonable for NRC to deem the analysis of a terrorist attack meaningless because it was not “quantifiable” when analytical models exist for this type of situation.

As with the nuclear facility in *San Luis Obispo Mothers for Peace*, ISOCI proposes storing large amounts of dangerous waste materials. Yet DTSC has granted ISOCI permission to store this hazardous waste without analyzing and disclosing the potentially catastrophic environmental results of a terrorist attack on the site.

DTSC should follow the federal NEPA precedent and analyze the environmental consequences of an act of terrorism on the facility. An attack on the ISOCI facility is less speculative or remote in likelihood than in the *San Luis Obispo Mothers for Peace* case, and DTSC is fully capable of analyzing and disclosing the potential effects of such an attack. In contrast to the San Luis Obispo facility, ISOCI is situated in the middle of densely-populated urban communities in the heart of Los Angeles, the second largest city in the United States and a past target of terrorism. While the Diablo Canyon Power Plant in *San Luis Obispo Mothers for Peace* was nestled inside 12,000 acres of isolated land, ISOCI sits inside an industrial and highly urbanized area and is within a mile of at least two schools, a public drinking water well, a Metrolink Commuter Rail Line, a recreation center, a senior center and various affordable/low income units which house thousands of people.

In addition, while ISOCI currently stores used oil and antifreeze, the facility proposes to begin storing an additional 380 RCRA waste code materials, including waste that is corrosive, highly flammable, and/or reactive, both alone and when combined with other waste products. Cyanide-containing wastes, phosgenes, methyl isocyanates, and hydrofluoric acids are among the many hazardous wastes that could be brought to the ISOCI facility and stored for up to one year in rail cars on unprotected rail sidings without secondary containment. For example, in the event that a terrorist attack derailed and toppled just *one* of the rail cars, which could potentially hold 25,000 gallons of cyanide-containing hazardous waste, the environmental effects on the surrounding area would be catastrophic.

Furthermore, as in *San Luis Obispo Mothers for Peace*, the risk of a terrorist attack on ISOCI is "quantifiable." The court in *San Luis Obispo Mothers for Peace* reasoned that it is possible to use low probability-high consequence analyses in assessing terrorist attack scenarios without quantifying the precise probability of risk. Under CEQA, DTSC is already responsible for analyzing catastrophic release scenarios at the ISOCI facility. Evaluation of a terrorist attack on a hazardous waste site will complete the catastrophic impacts analysis.

Finally, DTSC sets a potentially dangerous precedent by granting ISOCI a permit without fully assessing the environmental consequences of a terrorist attack on the facility. If an EIR is not required to address the impacts of possible terrorist attack in this situation, where a facility storing corrosive and harmful materials is located within a well-populated area, then it becomes unclear when a terrorist risk analysis would be required of any facility that would be a likely target for terrorism. By not evaluating these scenarios in advance, DTSC's failure to consider the impacts of a terrorist attack leaves the public uninformed and at risk. It is CEQA's intent that the public be informed about the environmental harms that threaten them. DTSC must analyze and disclose the potential consequences of terrorism on this hazardous waste facility.

As demonstrated by these decisions, the EIR must evaluate the potential environmental impacts of a foreseeable catastrophic event that affects the facility, including catastrophic release of hazardous waste. Even if this was not legally required, it would be unconscionable public policy not to do so. With residents located only one-quarter mile north of the facility, DTSC cannot allow this project to move forward without analyzing the impact of a catastrophic release on these nearby residents and adding appropriate mitigation measures. Other hazardous waste facilities have been required to analyze the risks from catastrophic release scenarios. DTSC must require ISOCI to do the same, revise the EIR to include a detailed analysis of catastrophic release scenarios involving rail cars and their impacts, and adopt all possible measures to mitigate the impacts.

#### **B. Failure to Evaluate Impact from Multiple Vessel Upset and Release**

The Final EIR fails to evaluate the risks posed by a multiple vessel upset and release scenario at the ISOCI facility. This scenario anticipates an incident that starts with one facility unit which causes a secondary and often more severe incident with a nearby facility unit due to thermal, blast or fragment impact. The American Institute of Chemical Engineers identifies the domino effect as an important topic to be considered when performing a chemical process quantitative risk analysis.

The purpose of a domino effect analysis is to predict the occurrence of such events so that the risk analysis does not underestimate the frequency or consequence of major incidents. CBE believes that an analysis of potential domino effects must be performed for ISOCI because chemical storage and/or treatment units, including up to ten rail cars storing up to 250,000 gallons of hazardous waste, will be located in close proximity to one another and contain ignitable, carcinogenic, and extremely toxic wastes. For example, an accident involving a railcar has the potential to affect an adjacent railcar, and an accident involving a storage or treatment unit has the potential to affect another nearby unit.

The Final EIR indicates that the combined chemical storage capacity of Containment Units #3 and 34 will be increased by 272,107 gallons within the same footprint, Container Management Area #7 will be used to store up to 640 55-gallon drums containing ignitable wastes, and the two rail spurs will be used to transfer hazardous wastes from an estimated 35 railcars per week. The hazard analysis performed for the Final EIR assesses the impacts of toxic release and fire hazard associated with only three primary incidents: 55-gallon drum rupture, gasket failure of a pump discharge line, and failure of a full storage tank. *See* Appendix F to Final EIR. The hazard analysis does not consider explosions, however, nor does it evaluate potential secondary impacts. As discussed earlier, different types of wastes will have be stored in close proximity to each other due to the small size of the ISOCI facility. An explosion or other reaction among wastes at unit of the facility could result in an uncontrollable fire that spreads rapidly and involves ignitable waste, petroleum waste, and other types of waste from another unit. The possibility of explosion or other reaction must be considered in the evaluation of primary incidents, and the potential for secondary impacts (i.e., domino effects) must be evaluated in the hazard analysis, otherwise, the risk analysis will underestimate the frequency and consequence of major

incidents. CBE requests that DTSC revise the EIR to evaluate the risks and potential impacts multiple vessel upset and release scenarios pose, and adopt appropriate mitigation measures.

**C. Failure to Evaluate Land Use Impacts from Redevelopment and Community Plans Conflicts**

The Final EIR completely fails to disclose and evaluate land use impacts from conflicts between the proposed ISOCI facility expansion and existing redevelopment and community plans. CEQA Guidelines require an EIR to “discuss any inconsistencies between the proposed project and applicable general plans and regional plans” as part its environmental setting analysis. CEQA Guidelines § 15125(d). Section 3.7.4.2 of the Final EIR purports to evaluate potential conflict with “applicable plans, policies or land use regulations,” but it does not evaluate conflicts with the Adelante Eastside Redevelopment Plan and the Boyle Heights Community Plan. Section 3.7.1 of the Final EIR, which describes the environmental setting for land use and planning, mentions a “Community Plan,” but does not discuss that plan or the Adelante Eastside Redevelopment Plan. The EIR does not propose or adopt any mitigation measures for conflicts between the Project and the Adelante Eastside Redevelopment Plan and the Boyle Heights Community Plan.

The ISOCI facility is located within the project area described by the Redevelopment Plan for the Adelante Eastside Redevelopment Project, which was adopted in 1999. Objectives of the plan include improving the quality of life for those who live and work in and visit the project area, promoting the elimination and prevention of the spread of blight and deterioration, and improving the quality of the environment. *See* Redevelopment Plan, § 106. In Comment 15-5, CCAT explained that the proposed expansion of the facility and the Permit conflict with the Redevelopment Plan.

One of the Redevelopment Plan objectives is to “improve the quality of the environment, promote a positive image for the area, and provide a safe and secure environment through mechanisms such as . . . promoting the development of safeguards, programs, and controls for the prevention and elimination of noise and air pollution and other environmental hazards.” Redevelopment Plan, § 106. The Project conflicts with this objective because the proposed expansion and modification will increase environmental hazards in the community, as described earlier in this Petition. In its Response to Comment 2-8, DTSC asserts that the environmental hazards associated with the proposed expansion are less than significant. As demonstrated in this Petition, the Final EIR’s evaluation of hazards is inaccurate because the HRA on which that EIR is based is flawed in a number of respects. Cancer risks have been greatly underestimated, likely by more than 2000%, and vastly exceed the typical significance threshold of one in a million used by DTSC and federal agencies. DTSC claims that cancer risks do not exceed a ten in a million significance threshold of the South Coast Air Quality Management District, but there is no basis for selecting this less protective number. The HRA also does not adequately evaluate risks from upset scenarios, mobile sources, accidental releases of new waste streams, and other scenarios. This is not the sort of redevelopment that is consistent with the objectives of the Redevelopment Plan.

The Redevelopment Plan encourages the development of an industrial environment that positively relates to adjacent land uses, including an emphasis on the development of operations that are environmentally safe. *See* Redevelopment Plan, § 106. The hazardous waste facility conflicts with this objective because it does not enhance adjacent land uses and its operations are not environmentally safe. Moreover, more intense industrial use by ISOCI is inconsistent with the Boyle Heights Community Plan. The Redevelopment Plan requires that industrial areas be used for industrial uses consistent with the community plan. *See* Redevelopment Plan, § 503.3. The Boyle Heights Community Plan supports a transition from more intensive to less intensive industrial uses, and its objectives include improving the quality of industrial developments. *See* Community Plan III-5. By proposing more intense use in a location that is near residential development, ISOCI is hampering these objectives.

The Redevelopment Plan emphasizes that redevelopment should “increase the supply and improve the quality of commercial retail shopping opportunities” and promote the development of sound residential neighborhoods. *See* Redevelopment Plan, § 106. The Final EIR notes that plans are being finalized for a massive mixed-used project on the 23.5 acre Sears site at Olympic Boulevard and Soto Street. *See* Final EIR, 3-91. The mixed-use development, which is located less than a half-mile from the ISOCI facility, will include 440 townhomes and condominiums, 180 rental apartments, 750,000 feet of retail space, and an office component. *See id.* The Sears site also is designated as a “Major Opportunity Site” in the Community Plan and as a future regional commercial center. *See* Community Plan I-5, I-8.

The proposed facility expansion will result in double the number of tanker trucks carrying hazardous waste to and from the facility, which likely will travel directly past the Sears site on Soto Street. This increase in heavy truck traffic, including the attendant noise and air pollution, is incompatible with the mixed-use development and will hinder successful redevelopment of the Sears site. Among other things, increased heavy truck traffic will exacerbate the hostile pedestrian environment at the Olympic/Soto intersection, which is identified in the Community Plan as a challenge to redevelopment of the Sears site. *See* Community Plan I-6. Businesses and residents may be deterred from locating at the Sears site because they will be exposed to the risk of hazardous materials in transit. Not only does the Project conflict with the commercial retail and housing objectives of the Redevelopment Plan, it also conflicts with the objective of creating “an attractive and pleasant environment in the Project Area.” Redevelopment Plan, § 520. The EIR’s cumulative impacts analysis acknowledges that “[t]here is potential for land use conflicts associated with the renovation of the Sears building,” and that development of the Sears site may be inconsistent with a Boyle Heights plan. *See* Final EIR, 5-17. However, the Final EIR does not evaluate these adverse impacts on future residents and employees at the Sears site, which has been designated in the Community Plan as the focus of redevelopment activity in the Boyle Heights community.

In its Response to Comment 2-10, DTSC states that the project conforms with the Redevelopment Plan simply because the City granted “deemed-to-be-approved” conditional use authority to existing hazardous waste facilities in a 1988 ordinance. Any proposed expansion or

modification of the facility, however, is not covered by the 1988 ordinance and must be evaluated by the Community Redevelopment Agency of Los Angeles ("CRA") under Section 408.4 of the Redevelopment Plan. *See* Redevelopment Plan, § 408.4. That provision, which CCAT pointed out in Comment 15-5 is ignored by the DEIR, requires that all development plans in the project area be submitted to CRA for approval. There is no indication that ISOCI ever submitted the development plan for the proposed expansion to CRA. Furthermore, the City may not issue a CUP for the proposed ISOCI facility expansion until CRA has reviewed the CUP application and determined that CUP to be in conformance with the Redevelopment Plan. *See* Redevelopment Plan, § 521.

As explained above, the Project conflicts with several objectives of the Redevelopment Plan and the Community Plan and thus will have a significant adverse impact on land use in the community that is not addressed in the Final EIR. DTSC must revise the EIR to evaluate and mitigate these conflicts, and recirculate a new EIR. DTSC should amend the Permit to require that CRA determine that the Project is in conformance with the Redevelopment Plan before the Permit becomes effective, and incorporate as conditions all mitigation measures necessary to mitigate land use impacts.

#### **D. DTSC Must Analyze Other Potentially Significant Impacts**

In Comment 4-44, CBE noted that while the DEIR implies that air quality and various other permits are being obtained by the facility, such permit applications and proposals had not been submitted by ISOCI or made available to the public. In its Response to Comment 4-44, DTSC apologizes for this confusion and states that permits for activities that comprise the proposed project and require a CEQA decision may not be issued until the EIR is finalized. This completely misses the point and suggests that there has been no coordination whatsoever between DTSC and other responsible agencies who must make discretionary decisions about the proposed expansion at ISOCI.

CEQA requires that an EIR identify and analyze all of a proposed project's "significant effects on the environment." *See* Pub. Res. Code § 21100(b); CEQA Guidelines § 15126.2(a). A significant effect on the environment means a substantial or potentially substantial, adverse change in the environment. *See* Pub. Res. Code § 21068. The CEQA Guidelines provide that, in discussing the environmental effects of a project, an EIR should contain "a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences." CEQA Guidelines § 15151. As the lead agency, DTSC must analyze all potential environmental impacts from the proposed project, regardless whether those impacts will occur from activities expressly authorized by the Permit issued by DTSC and without regard to the regulatory agency involved. Not only is this required by law, it is necessary for sound public policy. With regard to air quality, for example, DTSC must evaluate emissions that would result from the proposed activities, determine whether those emissions will have a significant impact on the environment, identify mitigation measures, and establish conditions in the Permit to implement appropriate mitigation measures. Even though permits have not yet been issued by other regulatory agencies, DTSC must analyze the

impacts on these resources and mitigate those impacts. As discussed elsewhere in this Petition, the Permit does not require ISOCI to address or evaluate groundwater contamination issues or soil vapor intrusion issues until the RFI has been performed, yet DTSC has not established a date by which the RFI must be completed. The 1994 RFA concludes that future consumption of groundwater contamination is a pathway through which human receptors could be affected. A public drinking water well that may be in active production is located one-quarter mile from the ISOCI facility. The EIR must analyze the potential impact of groundwater contamination from the facility, as well as the potential impact from soil vapor intrusion.

DTSC's failure to analyze all potential environmental impacts from the proposed project and its decision to effectively condition the Permit on ISOCI obtaining a CUP from the City also raises concerns about deferral of mitigation of potential environmental impacts. If land use and other impacts are not discussed until the City's review of an application for a CUP and those impacts are not addressed until appropriate conditions are imposed in the CUP, then DTSC is improperly deferring mitigation. DTSC must include in the Permit, conditions setting forth any special requirements necessary to mitigate potential environmental impacts that could be affected by permits issued by other agencies, such as a requirement to use best available control technology.

#### **E. The Final EIR Underestimated Air Quality Impacts**

The Final EIR acknowledges that air quality in the central Los Angeles area is out of attainment with state and federal ozone and particulate matter standards. Meanwhile, toxic air contaminants levels are so high that background cancer risk at the monitoring station closest to the ISOCI facility is 403 per million. As a result, any increase in emissions from the facility would cause significant air impacts. The Final EIR concludes that total proposed operational emission increases for NOx and VOCs will exceed significance criteria, therefore, feasible mitigation measures are required. *See* Final EIR 3-36.

In Comments 4-59 and 4-60, CBE explained that the DEIR failed to provide sufficient detail to ensure effective mitigation of the Project's significant impacts of NOx and VOC emissions, including NOx emissions from offsite truck and rail traffic. The Final EIR states that the dominant source of NOx emissions is from trucks and the dominant sources of VOC emissions is fugitive emissions and the proposed oil water separator. DTSC has failed to impose measures that will adequately mitigate the NOx emissions from these sources, however. For instance, a condition of the permit could be to require that all trucks which deliver wastes to the facility be fitted with LAER for the control of diesel and NOx emissions.

In Comment 4-56, CBE noted that the DEIR assessment of air toxics risk associated with the proposed expansion and modification of the ISOCI facility was performed in isolation from the industrial setting and thus underestimated the health impacts. DTSC has not addressed or corrected this deficiency. In its Response to Comment 4-56, DTSC states that toxic air contaminant emissions will result in less than significant carcinogenic impacts. As discussed

earlier, this is incorrect because incremental cancer risk calculated in the HRA exceeds the standard regulatory significance threshold of one per million and actual cancer risk from the proposed operations likely is more than 20 times greater than the risk calculated in the HRA. Contrary to DTSC's conclusion, the Project will result in significant air quality impacts to both adult residents and sensitive populations in the surrounding area. Moreover, as noted in Comment 4-58, the entire air quality impacts analysis is flawed because DTSC used an inaccurate description of baseline conditions.

The Final EIR concludes that operational cumulative air quality impacts will be significant because significance thresholds for all criteria air pollutants will be exceeded. DTSC draws the wrong conclusion about cumulative impacts of toxic air contaminants, however, by reasoning that toxic air contaminant impacts will not be cumulatively considerable simply because the DEIR found that project-specific impacts would not be significant. *See* Final EIR 5-8. As CBE noted in Comment 4-57, the DEIR did not adequately analyze the implications of adding to the burden of air pollution in a city with some of the worst air quality in the country. The Final EIR also fails to provide this analysis. The Final EIR specifically does not address the concentrated localized effects of the Project in combination with numerous other nearby emission sources. In its Response to Comment 4-61, DTSC asserts that localized effects were analyzed, but it cannot point to any health risk assessment that does so. Moreover, DTSC failed to address CBE's point that the air toxics risk assessment in the DEIR does not account for a planned population increase of more than 13,000 people in the vicinity of the facility.

In Comment 4-63, CBE identified that the DEIR had significantly underestimated glycol waste, resulting an error in vapor pressure estimation. Total VOC emissions are in fact nearly double the estimate provided in the analysis. In its Response to Comment 4-63, DTSC acknowledges this error but has not explained how it has adjusted conclusions about the impact of VOC emissions from the Project to account for this error.

The Final EIR's cumulative air impact analysis, including analysis of toxic air contaminants, is inadequate. DTSC should revise the cumulative impacts analysis for air quality in a revised DEIR and either adopt necessary measures to mitigate those impacts or select an alternative to the Project that will not worsen air quality in central Los Angeles by concentrating impacts on a community that is already disproportionately impacted by environmental harms.

#### **F. The Final EIR Fails to Evaluate Environmental Justice Concerns**

In Comment 4-49, CBE noted the absence of attention on the project's likely disproportionate impacts on nearby low-income Latino communities that already suffer from high levels of exposure to contaminants from existing industrial facilities in the area. In its Response to Comment 4-49, DTSC simply asserts that potential impacts on all receptors were addressed.

DTSC's own draft environmental justice policy states that DTSC will allocate its permitting resources "to reduce existing, disproportionate environmental and related health impacts on

ethnic minority and low-income communities,” and that DTSC will “[e]xplore available mitigation measures whenever a DTSC decision has the potential to adversely affect any community already suffering disproportionate environmental and/or health impacts.” There is no indication that DTSC has done so here, nor is there any support for DTSC’s conclusion that “no significant disproportionate impact on disadvantaged communities or communities of color will occur.”

Even worse, DTSC claims that the project will not have significant localized air quality impacts because truck emissions are spread throughout southern California, and that “[n]o negative environmental justice impacts are expected.” This is impossible when the number of trucks and rail cars arriving at the facility will double, they are primarily powered by diesel engines, and emissions from diesel engines have local air quality impacts, including risk of lung cancer and respiratory impairment from chronic exposure to even low-level diesel exhausts. As discussed above, the HRA does not even analyze the risks from trucks, rail cars, and other mobile sources. And as discussed elsewhere in this Petition, the HRA underestimates incremental cancer risk to the surrounding community from the Project by more than 2000%. The actual cancer risk to nearby adult residents and workers, which likely is  $2.43 \times 10^{-5}$  according to independent expert analysis, greatly exceeds the standard regulatory threshold. This disproportionate impact will be forced upon the low-income Latino communities adjacent to the ISOCI facility.

DTSC has utterly failed to address the serious environmental justice concerns raised by CBE, including a reasonable range of alternatives. DTSC cannot finalize the EIR with a Notice of Determination until it has followed its own policy and addressed the significant disproportionate impact the proposed expansion of the facility will have on the surrounding community, including requiring appropriate mitigation measures.

#### **G. The Final EIR Fails to Evaluate Impacts of Greenhouse Gas Emissions**

The Final EIR completely fails to disclose and evaluate the project’s greenhouse gas emissions and their contribution to global warming. The Final EIR neither proposes nor adopts any mitigation measures to address greenhouse gas emissions.

The California Legislature recognized the connections between greenhouse gas emissions and global warming when it passed AB 32, the “California Global Warming Solutions Act of 2006,” which was signed into law by Governor Schwarzenegger on September 27, 2006. Even before enactment of AB 32, Governor Schwarzenegger recognized the significance of the impacts of global warming on California in Executive Order S-3-05, noting that the state is “particularly vulnerable to the impacts of climate change.” In AB 32, the Legislature declares that global warming threatens California’s economy, natural resources, and environment and endangers the health of California citizens. See Health & Safety Code § 38501(a). Potential adverse impacts of global warming include exacerbation of air quality problems, a reduction in the quality and supply of water from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural

environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems. *See id.* Global warming also will have detrimental effects on California's agriculture, wine, tourism, skiing, recreational and commercial fishing, and forestry industries. *See id.*, § 38501(b).

To minimize the aforementioned environmental and economic impacts, AB 32 requires reduction of California's greenhouse gas emissions to 1990 levels by the year 2020. *See* Health & Safety Code § 38550. Under the legislation, the Air Resources Board ("ARB") must adopt regulations on or before January 1, 2008 establishing a program to require the reporting and verification of statewide greenhouse gas emissions and a statewide greenhouse gas emission limit equivalent to 1990 levels. *See* Health & Safety Code §§ 38500, *et seq.* The Legislature intends for the ARB to coordinate AB 32 implementation with stakeholders including DTSC, the environmental justice community, and environmental groups like, CBE, ProUno and CCAT. *See id.*, § 38501(f). Violators of the regulations promulgated to implement AB 32 will face criminal penalties. *See id.*, § 38580.

CEQA requires project proponents to address all of a proposed project's anticipated environmental impacts. *See* Public Res. Code § 21100. The CEQA Guidelines provide that, in discussing the environmental effects of a project, an EIR must include "a sufficient degree of analysis to provide decision makers with information which enables them to make a decisions which intelligently takes account of environmental consequences." CEQA Guideline 15151. By neglecting to analyze the project's greenhouse gas emissions and their impacts on global warming, or mitigate those impacts, the Final EIR is inadequate. Furthermore, absent information about emissions it is impossible to determine the project's cumulative impacts on California's greenhouse gas emissions. Even if emissions associated with the project are small in comparison to total emissions, this type of impact must be evaluated in a cumulative impact analysis. *See Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 721.

The Final EIR describes the facility's current use of boilers used to provide steam for the treatment process and a heater equipped with low NOx burners, all of which are fired by natural gas. *See* Final EIR, 3-21. A backup electrical generator also is utilized, which likely is fired by diesel or gasoline. *See id.* Natural gas, diesel fuel and gasoline are fossil fuels that emit carbon dioxide when burned. Diesel emissions are also greenhouse gases and VOCs are ozone precursors. Tropospheric ozone is also a greenhouse gas and has been implicated in the warming of the Arctic. The Final EIR does not include the facility's existing carbon dioxide emissions and other greenhouse gas emissions from sources in the baseline operational emissions summary in Table 3.3-5, which lists existing air emissions associated with sources at the facility. Such an analysis is possible and the necessary data are obtainable because greenhouse gas emissions can be quantified.

Similarly, the Final EIR does not provide a baseline operational emissions summary for the facility's off-site greenhouse gas emissions resulting from trucks, employee vehicles and railroad cars. The Final EIR indicates that the facility receives 30 truck deliveries per day up to a maximum of 45 deliveries per day, and describes some of the expected emissions from employee

vehicles and rail cars, but does not include greenhouse gas emissions in Table 3.3-5. These emissions may be significant, as U.S. EPA calculates that carbon dioxide emissions are 19.4 pounds from each gallon of gasoline and 22.2 pounds from each gallon of diesel fuel.<sup>5</sup> In addition, the Final EIR indicates that on-site construction equipment will be a source of combustion emissions from fossil fuels, but it fails to include in Table 3.3-7 the emissions that will result from the operation of the facility.

More significantly, the Final EIR fails to evaluate greenhouse gas emissions that will result from the proposed radically expanded operations at the ISOCI facility.<sup>6</sup> The Final EIR mentions at least two additional boilers/heaters that will be fired by natural gas. *See* Final EIR, 3-32. Although this additional equipment will result in increased greenhouse gas emissions, the Final EIR does not include the facility's future carbon dioxide emissions or other greenhouse gas emissions in Table 3.3-8. The Final EIR also omits the carbon dioxide emissions that will result from increased truck, employee vehicle and rail car traffic after the proposed expansion. The absence of any data describing baseline greenhouse gas emissions, additional emissions during construction and increased future emissions from the facility renders the Final EIR deficient.

It is clear that the ISOCI facility is a source of greenhouse gas emissions, that the project will result in an increase of foreseeable and quantifiable greenhouse gas emissions, and that this increase will contribute directly and cumulatively to global warming. The Final EIR fails to analyze the project's greenhouse gas emissions and their contribution to global warming, one of the most serious environmental threats facing California. This omission violates CEQA's environmental impact disclosure mandate and contravenes AB 32's goal of greenhouse gas emissions reduction. DTSC must prepare a revised EIR that evaluates the direct and cumulative effects on greenhouse gas emissions from current operations and future proposed operations.

DTSC also must evaluate and adopt adequate and real mitigation measures that minimize the impacts of greenhouse gas emissions to the maximum extent feasible. Mitigation options fall into two general categories: (1) options that reduce the amount of greenhouse gases emitted into the atmosphere, and; (2) options that offset increased emissions associated with the Project by removing greenhouse gases from the atmosphere or accelerating the natural rate at which they are removed. *See* Managing Greenhouse Emissions in California, The California Climate

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<sup>5</sup> *See* Average Carbon Dioxide Emissions Resulting from Gasoline and Diesel Fuel, U.S. EPA Emission Fact Sheet, EPA420-F-05-001, Feb. 2005 (available at <<http://www.epa.gov/otaq/climate/420f05001.pdf>>).

<sup>6</sup> Furthermore, the Final EIR may substantially underestimate the facility's future emissions of NO<sub>x</sub> and non-greenhouse gas emissions. The calculations provided in Tables 3.3-5 and 3.3-8 are often difficult to reconcile with the description of the proposed project in the Final EIR. For example, the narrative in section 3.3.1.3 indicates that the existing ISOCI facility has 18 employees and that employee vehicles emit 0.95 pounds of NO<sub>x</sub> per day. In section 3.3.4.2, the Final EIR indicates that when the project is completed, approximately 30 vehicles will travel to the facility each workday. Somehow this increase in employee vehicle traffic purportedly will result in a decrease in CO, VOC and NO<sub>x</sub> emissions. The Final EIR provides no explanation for this discrepancy. Similarly, section 3.3.4.2 states that a seven-fold increase in weekly railcar traffic from five railcars to 35 railcars results in only double the amount of railcar emissions, without explanation.

Change Center at UC Berkeley, at 4-3, Nov. 2006, available at <[http://calclimate.berkeley.edu/managing\\_GHGs\\_in\\_CA.html](http://calclimate.berkeley.edu/managing_GHGs_in_CA.html)>.

DTSC must evaluate mitigation measures aimed at reducing the amount of greenhouse gases associated with the facility's proposed expansion. DTSC could require ISOCI to install and use the energy generated by solar photovoltaic (PV) technology. Solar PV does not generate carbon dioxide and locating the solar PV unit at the facility will avoid transmission and distribution losses. *See id.* at 4-10, 4-16. Other mitigation measures include requiring the project to purchase clean power generated by California's burgeoning wind or geothermal energy sources and reducing the facility's natural gas use through replacement of boilers and heaters with energy efficient electric-powered boilers and heaters.

DTSC should evaluate measures for reducing the greenhouse gas emissions that would require that all railcar switching be performed by electric yard switching locomotives. For example, Railpower Hybrid Technologies Corp. reports that its GG series locomotives reduce fuel consumption and greenhouse gas emissions by 40-60%. *See* Railpower description of GG series, available at <[http://www.railpower.com/products\\_gg.html](http://www.railpower.com/products_gg.html)>. DTSC also should evaluate measures for reducing the greenhouse gas emissions from its truck traffic and employee vehicle traffic. A significant source of greenhouse gas emissions and fuel consumption may be avoided by reducing truck idling during truck loading and unloading activities at the ISOCI facility. *See* Managing Greenhouse Emissions in California, *supra*, at 4-37. Possible measures to mitigate emissions from employee vehicles include providing electric vehicle charging stations, encouraging employee use of public transportation through the issuance of vouchers designed to defray or eliminate an employee's out-of-pocket costs for bus and train fares, and encouraging employee ride-sharing through the purchase and use of van pool or car pool reward vouchers.

#### **H. The Final EIR Fails to Evaluate Energy Conservation Measures**

CEQA requires that an EIR include a discussion of the potential energy impacts of a proposed project, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary energy consumption. *See* CEQA Guidelines, Appendix F, Energy Conservation. An EIR must describe feasible mitigation measures proposed to reduce the wasteful, inefficient, and unnecessary consumption of energy. *See* Public Res. Code § 21100(b); CEQA Guidelines § 15126.4(a). CEQA Guidelines Appendix F provides a list of energy impact possibilities and potential conservation measures that should be considered in an EIR. Such information includes among other things a description of the energy consuming equipment and processes used during construction and operation of the project, the total energy requirements for the project by fuel type and end use, energy conservation equipment and design features, initial and life-cycle energy costs or supplies and total estimated daily trips to be generated by the project should be considered. *See* CEQA Guidelines, Appendix F. Environmental impacts include the project's effects on local and regional energy supplies; peak and base energy demands; energy resources; and the project's projected transportation energy use requirements and overall use of efficient energy transportation alternatives. *See id.*

The Final EIR does not discuss ways to avoid or reduce inefficient, wasteful and unnecessary consumption of energy. In fact, the EIR does not mention the Project's energy impacts at all. This omission is most peculiar in light of the 1995 Notice of Preparation's inclusion of energy impacts as an environmental resource potentially impacted by ISOCI's proposed project. See Table 3.1-1, Final EIR format compared to environmental resources addressed in the NOP.

The Final EIR's Project Description makes clear that the Project's construction and proposed operations will result in increased energy consumption. A significant increase in oil treatment capacity and the installation of wastewater treatment, waste solids treatment, and glycol recovery systems are all changes at the facility that are likely to increase the facility's energy use.

An energy usage increase due to the proposed expansion of oil treatment systems will likely be significant. However, it is not possible to analyze this impact because the EIR fails to provide baseline and proposed energy consumptions, and provides conflicting estimates of the oil treatment system's capacity increase. See Table 2-1, Final EIR compared to narratives on pages 2-10 and 2-16 of the Final EIR. The Final EIR describes an oil treatment system that transfers used oil from trucks and railcars with transfer pumps, heat treatment from two natural gas fired boilers or one proposed oil fired heater, and solids transfers to a filter press using more transfer pumps. Each of these pieces of equipment will use significant energy for its operations.

Similarly, the Final EIR provides no energy consumption data for the new wastewater treatment system or the glycol recovery system. It is apparent, however, that energy use will be significant because the proposed capacity for the wastewater treatment system is 84,600 gallons per day and several effluent pumps with variable frequency drives, mixers, process controls and at least one filter press are proposed. The proposed glycol recovery system has a capacity of 84,600 gallons per day and will feature several transfer pumps, a vapor compression process requiring heat, and a glycol distillation tower requiring heat. Significant amounts of energy will be required to operate and control the new wastewater treatment system and the glycol recovery system.

The Final EIR fails to discuss mitigation measures to minimize inefficient and unnecessary consumption of energy and thus violates the requirements of CEQA Guidelines § 15126.4(a)(1)(C). The inclusion, computation and mitigation of energy impacts have been cited by courts in evaluating CEQA claims. See *Citizens for Open Government v. City of Lodi* (2006) 144 Cal.App.4th 865, 873 (recognizing that the trial court granted petition for writ of mandate due to EIR's failure to analyze energy impacts); *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1989) 209 Cal.App.3d 1502, 1518-1519 (project's cumulative impacts on energy use had been mitigated by prior conditions imposed by approving resolution); *City of Rancho Palos Verdes v. City Council of the City of Rolling Hills Estates* (1976) 59 Cal.App.3d 869, 893-894 (rejecting challenge, in part, because EIR contained reports of experts on energy consumption).

DTSC must prepare a revised EIR that evaluates energy use from current operations and future proposed operations, energy conservation, and other mitigation measures. DTSC also must require ISOCI to adopt mitigation measures that minimize wasteful, inefficient, and unnecessary

consumption of energy by the ISOCI facility. Feasible mitigation measures, which must be described in accordance with CEQA Guidelines § 15126.4, might include measures to reduce energy consumption during construction, operation and maintenance; the potential for reducing peak energy demands; use of alternate fuels or energy systems; and energy conservation from recycling efforts.

### **I. Traffic Impacts Underestimated**

The Final EIR underestimates traffic impacts resulting from ISOCI's proposed facility expansion project. In Comment 4-79, CBE noted that the traffic impact evaluation failed to provide any analysis of freeways or freeway ramps, even though the facility is surrounded by four heavily congested freeways and truck traffic at the facility will double. In its Response to Comment 4-79, DTSC claims that no freeways need to be analyzed because the Los Angeles Congestion Management Plan does not require that freeway impacts be analyzed when a project will generate less than 50 peak hour trips. But the CMP simply makes such analysis mandatory at that level, it does not deter such analysis. An accurate traffic impact analysis for the project must account for the impact of trucks traveling to and from the facility exiting and entering one of the four freeways.

In Comment 4-79, CBE noted that potential traffic impacts are underestimated because DTSC used 2005 conditions as the baseline, rather than 1995 LOS data. Under CEQA Guidelines §15125(a), the analysis must evaluate impacts compared to baseline environmental conditions as they existed at the time the Notice of Publication was issued in 1995. By using 2005 LOS data as the baseline, DTSC has underestimated the potential traffic impacts of the proposed ISOCI facility expansion because the increase in the number of vehicles traveling to and from the facility is lower when compared to the 2005 LOS data than when compared to 1995 LOS data. In its Response to Comment 4-80, DTSC states that its use of 2005 data is acceptable because it provides a more conservative analysis. DTSC must follow the requirements of CEQA, not justify its failure to do so.

In Comment 4-80, CBE noted that the intersection LOS analysis assumes high lane capacities and is based on volume/capacity ratios. In its Response to Comment 4-80, DTSC asserts that the capacity estimates are very conservative and based on site surveys of each intersection. DTSC cannot have it both ways; either the capacity estimates are accurate because they are based on actual site surveys, or they are too conservative. In addition, it appears DTSC has not used correct baseline data. In Comment 4-81, CBE noted that the LOS data was calculated from intersection vehicle/capacity ratios rather than average vehicle delay data, which is the standard method of making such calculations. In its Response to Comment 4-81, DTSC states that CBE's comment provides no alternative method for completing the analysis. To the contrary, CBE stated that the alternative (and preferred) method is to use average vehicle delay information from the 2000 Highway Capacity Manual and its various updates.

Finally, DTSC has not addressed the degradation of traffic conditions at intersections near the facility, including one that is projected to change from LOS D to LOS E under the proposed

expansion. DTSC responds only to degradation of the Soto/Washington intersection. DTSC must redo its traffic impact analysis using the proper baseline data, correct the defects in the analysis identified by CBE, and require ISOCI to take measures to mitigate the significant traffic impacts that will result from the proposed expansion of the facility.

#### **J. Impact of Effluent Wastewater Underestimated**

In Comment 4-74, CBE stated that the DEIR was deficient in its assessment of both the volume of industrial wastewater to be generated from new process units at the ISOCI facility and the content of the effluent wastewater after use in ISOCI's industrial and treatment processes. CBE specifically questioned the cumulative volume impact that ISOCI and other nearby facilities would have on the industrial sewer system, because the Los Angeles Sewer Permit Allocation Ordinance 166060 limits the annual increase in wastewater discharges to 5 million gallons. Ordinance 166060 only establishes discharge allotments for the City of Los Angeles's Hyperion Treatment System. CBE explained that the seven projects identified in the DEIR's cumulative analysis together would add 877,366 gallons of wastewater to the industrial sewer system each day.

In its Response to Comment 4-74, DTSC explains that some of the projects identified in the cumulative impacts analysis do not discharge within the City of Los Angeles, and therefore do not discharge to the Hyperion Treatment System. In determining the cumulative impact of discharged wastewater on the industrial sewer system, DTSC must evaluate the impact of ISOCI and other facilities that discharge to the Hyperion Treatment System. Without such an analysis, there is no way to determine whether the added volume of wastewater that will be discharged from ISOCI will adversely affect the Hyperion Treatment System and its treatment limitations. The Final EIR should be revised to include an analysis of the impact of the added volume of wastewater from ISOCI on the Hyperion Treatment System.

The Final EIR states that ISOCI will be required to obtain an industrial waste discharge permit from the Los Angeles County Sanitation District, and that the facility will be required to comply with the permit conditions. The DEIR and Final EIR contain no analysis of the concentrations of hazardous constituents that are expected to be present in ISOCI's wastewater prior to treatment in the facility's wastewater treatment system. DTSC reiterates in its Response to Comment 4-74 that wastewater will be treated to meet sewer discharge standards before discharge into the sewer system. This provides no assurance that ISOCI's wastewater treatment system will be able to meet the required standards prior to discharge and fails to address CBE's concern that discharges from ISOCI may contain impermissible constituents or constituents in concentrations above the required discharge standard.

As the lead agency, DTSC must revise the Final EIR to include a description of the content of expected wastewater streams from ISOCI's processes, as well as evaluation of the potential impact of discharges from the facility that are not in compliance with the sewer discharge standards. In addition, the Permit should be amended to require ISOCI to apply for and comply with the conditions of the industrial waste discharge permit.

### **K. Impact of Stormwater Discharge Underestimated**

In its Response to Comment 4-75, DTSC states that the ISOCI facility currently is operating under the requirements of the general statewide industrial storm water discharge permit. The Final EIR states that a Storm Water Pollution Prevention Plan (SWPPP) has been prepared which requires the immediate clean up of spills and leaks. *See* Final EIR, 3-81. The Final EIR incorrectly states, however, that the "containment area has no sumps installed for removal of rain water and possible spills." Page 9 of Section IV of the Part B application states that the concrete floors of the containment areas are sloped and drain to sumps which are provided with a suction pipe to pump the liquid to Tank 800 and that "[c]ollected rainfall is collected and disposed of as hazardous waste or treated and sewered." DTSC should revise the Final EIR to contain an accurate description of how collected rainwater is managed at the facility in order to comply with the SWPPP.

The Final EIR states that no documented or reported spill or leaks have been reported, but the reference to this statement is from 1997. The Final EIR contains no statement regarding documented spills or leaks since 1997 and should be updated to include this information. Further, given ISOCI's history of noncompliance with environmental regulations, CBE has no assurance that ISOCI fully complies with its SWPPP. DTSC must revise the EIR to include an adequate analysis of the potential impact of stormwater discharge from the facility containing hazardous constituents from a spill or leak that occurs outside one of the secondary containment areas at the facility.

### **L. Impact of Floods Underestimated**

The Final EIR fails to adequately evaluate flood hazards or ISOCI's floodplain management construction requirements. ISOCI's Part B application acknowledges that the facility is within a floodplain. The June 3, 2004 letter referenced in Comment 4-76 states that, except for the main building, "[t]he remaining lot property remains in the [Special Flood Hazard Area]; therefore, new construction must comply with floodplain management standards." The Final EIR, however, does not analyze flood impacts on facility units and materials that could be impacted by a major flood.

DTSC states in its Response to Comment 4-76 that "[t]he DEIR did not consider floodplain management requirements because the main building is located above the Base Flood Level." This response ignores the fact that all of the hazardous waste management units at the facility appear to be within the floodplain. The Final EIR must be revised to include an evaluation of potential flood hazards, a description of ISOCI's construction to comply with floodplain management standards, and an analysis of potential environmental impacts from a release of hazardous constituents from the facility caused by washout from a flood.

In its Response to Comment 4-76, DTSC also states that a special condition has been added to the Permit which requires ISOCI to demonstrate that the facility is not located within a 100-year

floodplain within 60 days of the effective date of the Permit. If the facility is found to be in a 100-year floodplain, ISOCI must submit a plan to show how it will comply with the floodplain requirements of 22 CCR § 66264.18. All hazardous waste facilities applying for Part B permits must demonstrate in their Part B applications whether or not the facility is within a 100-year floodplain. ISOCI should not be allowed to delay making this demonstration simply because it failed to do so in the Part B application. DTSC should amend the special condition to instead require that ISOCI complete the 100-year floodplain analysis prior to approval of the Permit, and the EIR must be revised to include an adequate evaluation of the potential impact of flood hazards.

#### **M. Failure to Evaluate Impact of Potential Odors**

The EIR fails to analyze the impact of odors even though the facility proposes to accept a major increase in throughput of chemicals of potential concern. The impacts analysis should evaluate similar hazardous waste facilities, with throughputs and chemicals of potential concern similar to those that ISOCI proposes to accept and manage. DTSC must amend the Final EIR to include information about the number of odor complaints and odor violation notices for similar facilities and summarize this information in a table to enable clear determination of the likely odor impacts associated with the facility. If these facilities have been associated with odor complaints and odor violation notices, then DTSC must undertake a detailed odor evaluation study and include the results, along with an evaluation of potential impacts, in a revised EIR.

#### **N. Inadequate Evaluation of Cumulative Impacts**

CBE described several deficiencies in the cumulative impacts analysis. First, as explained in Comment 4-86, the DEIR utilized inconsistent analytical approaches and cumulative methodologies without a carefully reasoned rationale, applying a growth rate for some topics and a project list for other topics. In its Response to Comment 4-86, DTSC states that general assumptions from plans were used for some topics when sufficient data were not available. DTSC misses the point about the importance of internal consistency for accurate analysis of cumulative impacts. This must be corrected in a recirculated EIR.

Second, as described in Comment 4-87, the DEIR did not clearly set forth or consistently apply significance standards for evaluating cumulative impacts and thus CBE is unable to determine the basis for DTSC's statements that a particular cumulative impact is significant or not significant. In its Response to Comment 4-87, DTSC incorrectly asserts that significance criteria are specifically defined in Chapter Five of the Final EIR. For each topic that DTSC determined will not have a significant cumulative impact include, the Final EIR merely includes the same conclusory boilerplate language that the "impacts are not cumulatively considerable and thus not significant because the environmental conditions would essentially be the same whether or not the proposed project is implemented." DTSC must prepare a new cumulative impacts analysis that describes an individualized significance standard for each topic.

Third, the DEIR assumed that cumulatively considerable impacts can only occur when project-specific impacts are identified as significant. CBE pointed out in Comment 4-88 that DTSC's approach seems to be that if project-specific impacts would not be significant individually, then their impacts are not cumulatively considerable. The only effects identified by DTSC as contributory are operational impacts for criteria air pollutants. In response, DTSC refers CBE to its Response to Comment 4-87, which is unresponsive to the issue raised in Comment 4-88. CBE construes this non-response as acknowledgment of DTSC's flawed cumulative impacts analysis. DTSC must prepare a new cumulative impacts analysis that corrects the defects identified by CBE, and include this analysis in a recirculated EIR.

Finally, the evaluation of cumulative land use impacts is entirely deficient. The cumulative impacts analysis acknowledges that "[t]here is potential for land use conflicts associated with the renovation of the Sears building," and that development of the Sears site may be inconsistent with a Boyle Heights plan. *See* Final EIR, 5-17. It concludes, however, that until the Sears redevelopment project is more defined, the magnitude of impacts is unknown. *See id.* The Sears site is designated as a "Major Opportunity Site" and a future regional commercial center in the Boyle Heights Community Plan. The planned mixed-use development, which is located less than a half-mile from the ISOCI facility, will include 440 townhomes and condominiums, 180 rental apartments, 750,000 feet of retail space, and an office component. There is sufficient detail for DTSC to evaluate the magnitude of impacts, especially given that the proposed expansion of the ISOCI facility directly conflicts with objectives of both the Community Plan and the Adelante Eastside Redevelopment Plan. DTSC must redo its evaluation of cumulative land use impacts.

#### **O. Description of Enforcement History**

In Comment 4-29, CBE noted that the enforcement history section of the DEIR misleadingly characterized ISOCI as a generally compliant facility by omitting numerous instances of noncompliance after 1996. In Comments 4-45 and 15-7, CBE, CCAT and ProUno requested that DTSC provide a full description of the facility's enforcement history in the Draft EIR. In its Response to Comment 4-29, DTSC apologizes for any inadvertent omissions and states that the Final EIR has been revised accordingly. DTSC has added a table describing 11 sets of violations, but all text in the table is in small type that is difficult to read, and the incomplete discussion of enforcement has not been changed. This has the effect of downplaying the violations.

#### **P. Impact of Distillation Unit and Ethylene Glycol**

In Comment 4-68, CBE stated that the hazard analysis failed to evaluate the risk of the distillation unit overheating and cracking. In its Response to Comment 4-68, DTSC asserts that there is no proposed distillation unit at the facility and therefore no evaluation is necessary. However, it is clear that a distillation column exists at the site, and in fact is one of the main processes employed by ISOCI in reclaiming waste glycol. The presence of this column is acknowledged in DTSC's responses, and is illustrated in Figure IV-24 - prepared by Glycol

Specialists. DTSC must explain this inconsistency and address CBE's concern about the probability and impact of an operational failure of the distillation column.

DTSC discounted ethylene glycol as a chemical of potential concern claiming that it is absent from listing by OEHHA and EPA's IRIS database, among others. In fact, the health risks of ethylene glycol are documented in the IRIS database (*see* <http://www.epa.gov/iris/subst/0238.htm>) and in numerous other publications. Ethylene glycol is expected to be one of ISOCI's primary waste streams, yet DTSC appears to misunderstand the risks associated with this waste stream. The hazards associated with accepting and handling ethylene glycol must be analyzed by DTSC in a revised EIR.

#### **Q. Inaccurate Description of Baseline Conditions**

The environmental setting "as they exist at the time the notice of preparation is published" constitutes the baseline physical conditions. *See* CEQA Guidelines § 15125(a). In Comments 4-50 through 4-54, CBE explained that the DEIR's description of baseline conditions is vague, severely inaccurate, and legally inadequate. DTSC has not corrected the description of baseline conditions in the Final EIR and continues to insist that changes made since the Notice of Preparation for this project was published are properly included in the baseline conditions. As a result, the Final EIR's determination of significant impacts is flawed because the proposed operations at the facility cannot be evaluated against the correct environmental setting.

As CBE noted in Comment 4-51, the Notice of Preparation for this project was published on October 12, 1995 and thus any changes to the project site or its surrounding conditions that have occurred since that date cannot properly be included within the description of baseline conditions. In Comment 15-6, CCAT also commented that the NOP is stale. In its Response to Comment 4-51, DTSC states only that the baseline is described on page 3-2 of the DEIR and that the baseline used for each environmental resource is described in chapter 3 of the DEIR. Page 3-2 of the DEIR states that the environmental setting for the facility "includes those activities currently permitted under the Part A Permit," including activities that have been allowed under the Interim Status Document, and that "[t]he baseline for the ISOCI facility is the date of the most recent Part A approval from the Department ..." This is simply wrong under well-established California law.

In *Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 119, the Court of Appeal held: "Without a determination and description of the existing physical conditions on the property at the start of the environmental review process, the EIR cannot provide a meaningful assessment of the environmental impacts of the proposed project." Here, any changes to the project site or its surrounding conditions that have occurred since 1995 do not comprise the environmental setting as defined under CEQA. DTSC must correct the description of environmental setting in the EIR.

In Comments 4-52 and 15-8, CBE, ProUno and CCAT noted that the DEIR never clearly distinguishes between the components of the facility that are existing and those that are proposed. This is a problem because existing components that were implemented in a piecemeal

fashion since the Notice of Preparation was published in 1995 cannot be included in the baseline conditions. In Comment 4-53, CBE noted that operations at the facility have expanded significantly since the Notice of Preparation was published in 1995. In its Response to Comment 4-53, DTSC states that these changes “are generally related to compliance with changes to the statute and its implementing regulations.” DTSC refers to its Response to Comment 4-52, but neither response explains what statute it refers to. Regardless of the statute referred to, it does not appear that all the changes that have occurred at the facility since 1995 are related to changes in legal requirements, and even if this was true, such changes cannot be included in the baseline description. DTSC has presented no authority to support its creative interpretation of the plain language of CEQA Guidelines § 15125(a).

After discussing the changes that have occurred since 1995, DTSC then contradicts itself by asserting that no substantial physical changes have occurred at the facility and that the changes are merely the result of a more accurate description. Among other things, DTSC claims that the description of existing tank capacity in the NOP was overstated by almost 200,000 gallons, or approximately 20%. If this is true, then the NOP was inaccurate and highly misleading and DTSC needs to re-commence the environmental review process. DTSC also states that any changes in the project description over time are due to elimination of portions of the project. DTSC again misses the point; the baseline focuses on conditions at the time the NOP was prepared, not the description of the project that was proposed at that time.

DTSC bears the burden to accurately describe all changes that have occurred at the project site since publication of the NOP. In its Response to Comment 4-52, DTSC states that Table 2-1 in the DEIR identifies existing equipment at the facility that is part of the baseline. Table 2-1, however, includes facility components that were added after 1995. Such components, including equipment, cannot be part of the baseline for the reasons discussed above. DTSC indicates that its description of baseline conditions in the EIR for this project is no different than in other projects. CBE therefore requests that DTSC explain how baseline conditions were identified in other EIRs that DTSC has prepared.

In Comment 4-54, CBE requested that a recirculated DEIR clearly identify all permits, facilities, and changes that have occurred on the project site since 1995, and include each of those changes as project components. DTSC has refused to do so. Instead, in its Response to Comment 4-54, DTSC merely references Table 2-1 and refers the reader to its responses to two other comments, 4-29 and 4-44, neither of which is responsive to CBE’s comment.

In Comment 4-55, CBE noted that for each and every environmental topic analyzed, DTSC must analyze potential impacts based on baseline conditions as they existed at the time the Notice of Preparation was published in 1995. As CBE stated, “without an accurate description of baseline conditions, an accurate evaluation of project impacts is impossible.” DTSC’s only response to this comment is to refer the reader to its Responses to Comments 4-51 through 4-54. CBE requests that DTSC remedy the severe defects of the baseline by either incorporating accurate evaluations of baseline conditions into all aspects of a recirculated DEIR or by reinitiating the Notice of Preparation process with subsequent preparation of new Draft EIR.

## R. Inadequate Evaluation of Mitigation Measures

The Final EIR is required to “describe feasible measures which could minimize significant adverse impacts” (CEQA Guidelines § 15126.4(a)), and DTSC is required to mitigate or avoid the significant effects of this Project “whenever it is feasible to do so.” Pub. Resources Code § 21002.1(b). “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. In the Statement of Findings, DTSC asserts that no additional feasible mitigation measures, other than those included in the Final EIR, have been identified. To the contrary, CBE has identified in its comments and in this Petition numerous feasible measures that could mitigate the significant environmental impacts of the proposed expansion and modification of the ISOCI facility, including the following:

- Require long term storage of hazardous waste in stationary tanks instead of in rail cars. Hazardous waste storage tanks are subject to frequent inspections and periodic integrity assessments, must be anchored properly to prevent damage during earthquakes, and must be equipped with a passive secondary containment system that can contain the volume of the entire tank. This measure will prevent the catastrophic or other release of hazardous waste from a rail car that could adversely affect the surrounding community.
- Require a passive secondary containment system (walled containment basin) for the rail spur if ISOCI is authorized to perform long term storage (up to one year) of hazardous waste in rail cars on the rail spur. The passive secondary containment system must be able to contain the entire volume of a rail car in the event of a catastrophic release from a rail car. This measure will contain and reduce the impact of a release of hazardous waste from a rail car that could adversely affect the surrounding community.
- Require a passive secondary containment system (walled containment basin) for the truck loading and unloading areas. The passive secondary containment system must be able to contain the entire volume of a tanker truck. This measure will contain and reduce the impact of a release of hazardous waste from a truck that could adversely affect the surrounding community.
- Reduce the number of RCRA hazardous waste codes that the ISOCI facility will be authorized to accept. This measure will reduce the likelihood of a reaction between incompatible wastes, reduce the possibility of a multiple vessel reaction, and reduce the hazard and risk (including cancer risk) posed by the proposed operations, all of which could adversely affect the surrounding community.
- Require detailed procedures for segregation of incompatible hazardous wastes. This measure will reduce the possibility of a chemical reaction between incompatible wastes, which may cause a release of hazardous waste that could adversely affect the surrounding community.

- Remove authorization to conduct fuel blending. This measure will greatly reduce the amount of mixing of hazardous wastes (including incompatible wastes which can result in explosions) at the facility, which increases the risk of a release of hazardous waste that would adversely affect the surrounding community.
- Place the ISOCI facility on Enhanced Surveillance Inspection status. This measure will ensure that ISOCI understands the importance of maintaining compliance with all applicable hazardous waste regulations in order to protect the surrounding community and more frequent inspections will reduce noncompliance with applicable legal requirements and the terms of the Permit. ISOCI should provide mitigation funding to increase the inspection staff at DTSC so the Department can inspect the facility more often. This is especially important given the facility's compliance history and the significant risks from the wastes it intends to accept.
- Require the Waste Analysis Plan to be implemented by properly trained personnel and require more frequent fingerprint testing of incoming hazardous wastes. This measure will ensure that incoming wastes are properly analyzed and that unacceptable wastes, such as cyanides, dioxins, reactives, and wastes with high concentrations of PCBs, are not accepted into the facility.
- Require detailed procedures to implement the Operating Record. This measure will ensure that the facility is able to accurately track the type, amount and exact location of every hazardous waste at the facility at all times, which will reduce the possibility of a chemical reaction between incompatible wastes, which may cause a release of hazardous waste that could adversely affect the surrounding community, and assist emergency response personnel in the event of a fire or other accident involving the facility.
- Restrict the staging of hazardous waste containers outside of permitted areas. This measure will ensure that hazardous wastes do not remain outside of permitted storage or treatment areas without proper containment.
- Require tank assessments every three years by a California-registered professional engineer with a confined space entry certificate. More frequent tank assessments will ensure that the condition of tanks is maintained to prevent a release of hazardous waste that could adversely affect the surrounding community.
- Recalculate the closure cost estimate so that it covers the full cost of closing the facility under a worst case scenario where the maximum number and volume of hazardous waste codes are present at the facility. This measure will ensure adequate funds are available to close the facility in the event the facility is abandoned by its owners or operators, and it will allow closure activities to commence sooner.

- Require that the facilities listed in the closure plan that will accept hazardous wastes from ISOCI at time of closure are permitted to accept all hazardous wastes which may come from the facility. This measure will also allow hazardous wastes to be removed from the facility more quickly.
- Require ISOCI to obtain an industrial wastewater discharge permit prior to the effective date of the Permit. This measure will ensure that the facility is able to comply with any pre-treatment standards for wastewater from its hazardous waste treatment processes, and also prevent discharge of wastewater containing concentrations of hazardous constituents above regulatory thresholds.
- Revise and reorganize the Part B permit application. This measure will ensure that DTSC inspectors, as well as facility personnel, are able to more easily determine whether the facility is complying with permit requirements
- Require that DTSC's Statewide Compliance Division review and concur with the Waste Analysis Plan. This measure will ensure that Permit-related documents are enforceable.
- Require a compliance schedule for corrective action both at the facility and beyond the facility boundary. This measure will ensure that existing subsurface contamination is remediated more quickly and reduce risks to the surrounding community from facility contamination.
- Require that all trucks delivering wastes to the facility be fitted with the best technologies which reduce diesel emissions into the surrounding community.
- Require evaluation of groundwater contamination and vapor intrusion prior to completion of the RFI. This will ensure that groundwater contamination and soil vapor pathways are assessed in the short term, that any contamination is remediated quickly, and that risks to the surrounding community from contaminated groundwater and soil vapors are reduced.
- Require use of solar photovoltaic technology, use of power from renewable sources, use of energy-efficient electric-powered boilers and heaters, railcar switching by electric yard switching locomotives, reduction of truck idling during loading and unloading activities. This measure will reduce greenhouse gas emissions and the facility's impact on global warming.
- Require conformance with the Adelante Eastside Redevelopment Plan and the Boyle Heights Community Plan. This measure will reduce land use impacts and conflicts between the project and the plans.

The Final EIR is fundamentally flawed because it does not evaluate feasible mitigation measures, including but not limited to those listed above. CBE requests that the EIR be revised to identify and evaluate these and other potentially feasible mitigation measures.

### **S. Failure to Evaluate Reasonable Range of Project Alternatives**

Chapter Four of the Final EIR, "Project Alternatives," is inadequate because it fails to evaluate a reasonable range of alternatives to the Project that will enable informed decision-making. The Final EIR evaluates only three alternatives, which misleadingly are titled "No Project," "Facility Relocation," and "Reduced Operations." DTSC should have evaluated additional alternatives, including a "reduced expansion" alternative and different locations, taking into account community input received through the Tanner Act process. Furthermore, DTSC should have selected the Reduced Operations Alternative, which it identifies as the environmentally superior choice, instead of the proposed project.

Under CEQA, an EIR "must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation." CEQA Guideline § 15126.6(a). The range of alternatives to the project, or the location of the project, should "feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects." *Id.* The discussion of alternatives should "focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." *Id.*, § 15126.6(b).

The No Project Alternative explanation states that this alternative "corresponds to no development and no operations, or simply to no changes from the present conditions at the site." *See* Final EIR 4-3. The present conditions at the site entail the existing ISOCI facility, which accepts and recycles used oil and oil/water mixtures, and also receives and collects spent anti-freeze for transfer to other facilities for recycling. CBE interprets the statement above to mean that the ISOCI facility would remain operating as it does currently, without expansion or modification of operations. In fact, the Final EIR states that the No Project Alternative described in Chapter Four means the Part B Permit application would be denied, all hazardous waste activities at the facility would cease, all wastes at the site would be transported to another suitable facility for management, and the ISOCI site would be reused for another heavy industrial use. *See* Final EIR 4-3. This alternative also assumes that the facility would be decommissioned, all structures and equipment would be removed, and remediation would be conducted as necessary.

The CEQA Guidelines explain that the purpose of the no-project alternative "is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project." CEQA Guidelines § 15126.6(e)(1). Here, in DTSC's No Project Alternative, ISOCI shuts down the facility, it does not maintain the status quo without change to existing or baseline conditions. This is clearly erroneous because ISOCI received a

revised Part A permit in 1989 and has interim status to continue to operate the facility while its Part B application is pending. The No Project Alternative is properly described as the existing operations at the facility, with no expansion or modification. This would entail denial of the Part B application only with respect to proposed expanded or modified operations, not denial of the entire Part B application. CBE explained in Comment 4-83 that the definition of the No Project Alternative as “no development and no operations” is atypical when expansion of an existing facility is proposed. DTSC’s Response to Comment 4-83 merely reiterates the description of this alternative in the Final EIR. The description of the No Project Alternative in the Final EIR should be revised to reflect existing operations at the facility so that it is consistent with the CEQA Guidelines for a project where expansion of an existing facility is being considered.

The Facility Relocation Alternative would involve locating the ISOCI facility to a new site. The Final EIR states that three hypothetical alternative sites located in different industrial areas of Los Angeles County were evaluated. The Final EIR express doubt that an alternative site could be found within Los Angeles County, in part because siting of a new facility would trigger the Tanner Act community involvement process. *See* Final EIR 4-11. CBE explained in Comment 4-84 that the ISOCI facility must go through the same siting and Tanner Act process as a new facility in a different location because ISOCI must obtain a CUP from the City for its proposed expanded operations. DTSC indicates that siting the ISOCI facility in another location will be more difficult than expanding the facility in its current location. CBE disagrees.

In its Response to Comment 4-84, DTSC quotes from the DEIR, emphasizing its view that it is doubtful that an alternative site could be found in Los Angeles County where all necessary permits could be obtained and that is farther from residences than the current site. The CEQA Guidelines require that if no feasible alternative locations exist, “it must disclose the reasons for this conclusion, and should include the reasons in the EIR.” CEQA Guidelines § 15126(f)(2)(B). DTSC has not evaluated alternative feasible locations and gives up too easily on the prospect of finding a suitable alternative location. In fact, the Final EIR only lists hypothetical alternative sites; not specific locations or parcels. DTSC’s position that an alternative site in Los Angeles County probably cannot be found is pure speculation.

CBE believes that if the City was the lead agency, it would be able to identify specific alternative sites for evaluation, including based on input received during the Tanner Act process. The City could then compare and evaluate those sites with a level of sophistication that is next to impossible for DTSC because DTSC lacks expertise and authority to make land use decisions. Such decisions are best made by the local land use permitting agency, which better understands the land use patterns and needs of its specific area. The City, in conjunction with the County of Los Angeles, could more easily and accurately evaluate specific pieces of property in the greater Los Angeles area that may be suitable for relocation of the ISOCI facility. Further, if suitable property was not currently zoned for a hazardous waste facility, the City and County could consider changing the zoning designations of certain areas to create suitable alternative locations.

The Final EIR states that the Reduced Operations Alternative would “involve reducing current operations from the levels in the proposed project to those that currently exist.” Final EIR 4-18.

“Current” operations at ISOCI and those that “currently” exist are the same thing. Regardless of this confusing statement, CBE explained in Comment 4-85 that that this alternative corresponds to what is more typically defined as the “No Project Alternative.” Describing this alternative as “reduced operations” misleadingly implies that it is a version of the proposed ISOCI expansion on a smaller scale, and the title should be changed to more accurately reflect this alternative. CBE understands that the Reduced Operations Alternative, as described in the Final EIR, actually would entail continuation of the existing operations of the facility, with no additional hazardous waste streams or management practices.

DTSC identifies the Reduced Operations Alternative as the “environmentally superior choice” because it would reduce overall project impacts. *See* Final EIR 4-23. DTSC finds that the proposed project is preferred to the environmentally superior choice, however, because “it will fully enable ISOCI and [DTSC] to achieve the project objectives.” *Id.* This is no surprise because DTSC improperly defined the project objectives so narrowly and specifically that these objectives could only be achieved by the proposed project. For example, the stated objectives include “expand facility operational capabilities to include waste water treatment, glycol distillation, oil ultra-filtration, fuel blending, solids stabilization, and increased loading/unloading railcar operations,” and “accept additional waste streams at the ISOCI facility.” Final EIR 4-1. By doing so, DTSC’s arbitrarily and improperly rendered moot the entire environmental review process because it manipulated the objectives to guarantee selection of the proposed project over any alternative. This is arbitrary and improper because unlike the environmentally superior alternative, the proposed project will have significant environmental impacts that cannot be mitigated, which will adversely impact the health and safety of the surrounding community and the environment.

Curiously, DTSC concludes that the project will also achieve more general objectives that are not included in the stated objectives of the project set forth in the Final EIR at the beginning of Chapter Four. These objectives include providing treatment options for hazardous waste near the sources of generation, asking generators of hazardous waste to engage in waste minimization, minimizing transportation distances for the treatment of hazardous waste, and providing adequate capacity for the safe, efficient treatment of hazardous waste within the greater Los Angeles area. *See* Final EIR 4-23. The Facility Relocation Alternative, the environmentally superior alternative, and other alternatives that should have been evaluated could achieve these objectives. DTSC has not explained how the proposed project better achieves these more general objectives with less environmental impact than alternatives to the Project.

The three alternatives evaluated in the Final EIR do not provide a “reasonable range of alternatives” as required by CEQA. The Final EIR should evaluate at least one alternative similar to limited expansion of the ISOCI facility, equivalent to an option between the Reduced Operations Alternative and the Project. *See* CEQA Guidelines § 15162.6(c), and alternative feasible sites. In order to develop a reasonable range of alternatives to the Project, DTSC needs the input of the surrounding community that will occur through the Tanner Act process. Moreover, consistency with local redevelopment and community plans must be considered for alternative locations. DTSC has limited jurisdiction and the City is the only agency that can

accurately evaluate alternative locations. This demonstrates yet another reason why the City should be re-designated the lead agency for the Project.

CBE requests that DTSC revise Chapter Four of the Final EIR to include a reasonable range of alternatives to the Project, including evaluation of a "limited expansion" alternative and specific alternative sites, that DTSC replace the project objectives listed on page 4-1 with a more general and appropriate set of objectives, and that DTSC re-evaluate whether the environmentally superior alternative achieves the new set of project objectives.

#### **T. Incorrect Lead Agency**

The Proposed project requires the City to make critical land use decisions. In Comments 4-92 and 16-6, CBE requested that DTSC allow the City of Los Angeles to act as the lead agency for CEQA purposes if DTSC would not coordinate the CEQA environmental review process with the community involvement process that the City will initiate under the Tanner Act. In its Response to Comment 2-2, DTSC confirms that it only became the lead agency because it began the process before the City determined that ISOCI would have to obtain a CUP for the proposed facility expansion. This process raises important policy considerations as to whether DTSC should continue as a lead agency when DTSC has not coordinated the environmental review process with the Tanner Act community involvement process that the City will initiate.

DTSC states that it did not receive a response from the City of Los Angeles to its request in a letter dated August 15, 1994 that the City inform DTSC if it considered itself to be the lead agency for the ISOCI project. Approximately five weeks later, DTSC told the City that it was assuming lead agency responsibility and inquired whether the facility would be required to obtain a land use permit that might trigger the Tanner Act process. DTSC claims that this was sufficient to determine that it was the proper lead agency. To the contrary, the only information the City appears to have had about the project in 1994 would have described a project far different from what it now is today. Based on the inaccurate 1994 project description, the City may well have believed at the time that a CUP was unnecessary and that a Tanner Act process was not required for the project, and thus allowed DTSC to proceed as the lead agency. DTSC only became the lead agency because it acted before the City had determined that a CUP would be required for the facility.

As noted in Comment 4-92, just a few months after DTSC took on the role of lead agency, the City determined that a CUP would be required. The City is responsible for issuing a CUP that covers all of ISOCI's operations, not just its hazardous waste operations. The DEIR acknowledged that a CUP would be required for the facility's proposed operations because they constitute a "major modification" to the facility. In 1996, ISOCI applied to the City for a CUP to modify the facility for various hazardous waste operations. The City responded the following year by stating that ISOCI's application was incomplete. There is no record that ISOCI responded to the City or made any reasonable progress toward obtaining the necessary land use permit. In 2004, the City cancelled ISOCI's CUP application due to lack of activity.

The City should have been designated the lead agency for the EIR because the City must make a critical land use decision concerning a "major modification" to the facility that triggers the requirement for a CUP. The CEQA Guidelines provide that "[t]he Lead Agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose . . ." CEQA Guidelines § 15051(b)(1). When the project is to be carried out by a nongovernmental entity, as is the case here, "the Lead Agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole." *Id.*, § 15051(b).

Approval of an EIR may be overturned when the wrong agency was designated the lead agency. For example, in *Planning and Conservation League v. Dep't of Water Resources* (2000) 83 Cal.App.4th 892, the Court of Appeal ruled that a county water agency had been wrongfully designated lead agency for purposes of preparing an EIR because it did not have the principal responsibility for carrying out or approving implementation of the project at issue. The City has primary responsibility over a critical land use decision concerning the facility, as well as responsibility for implementation of the community involvement process required by the Tanner Act. Moreover, due to DTSC's limited jurisdiction, the City is the only agency that is capable of evaluating alternatives to the proposed expansion and modification of the ISOCI facility, such as different locations for the facility's proposed operations, and determining whether those locations are consistent with applicable land use plans.

As discussed above, the permitting process must be reopened and coordinated to run simultaneously with the Tanner Act process so that decisions about hazardous waste issues are not artificially divorced from the land use issues, and to ensure the public's meaningful involvement. Before ISOCI can expand the facility's operations as proposed, ISOCI must submit a new CUP permit application to the City, wait for the Tanner Act community involvement proceedings to commence, including establishment of a Local Assessment Committee, and wait for the Tanner Act proceedings to complete. These proceedings will take many months to complete after ISOCI submits a new CUP permit application (which time is unknown). As a result, by the time it is appropriate for the City to determine whether to issue a CUP, the Final EIR and other environmental review-related documents will be out of date and inaccurate. If the City does not grant a CUP or if it substantially modifies the project, DTSC's process will have been a waste of time and resources because ISOCI would be required to obtain a new permit. DTSC should re-designate the City as the lead agency for this project for purposes of completing the environmental review process under CEQA.

In its response to Comment 4-92, DTSC states that because it assumed the lead agency role and the City provided input during the environmental review process, the City's role as a responsible agency has been established. DTSC also asserts that there is no authority to shift lead agency status after the NOP for a project has been circulated for agency review. However, CEQA Guidelines § 15052(a)(3) authorizes a shift in lead agency designation when the lead agency has prepared inadequate environmental review documents. As explained in CBE's comments, the EIR and HRA are severely deficient and it is appropriate to shift lead agency designation from DTSC to the City. DTSC has provided no authority indicating that lead agency designation

cannot be changed after the NOP has been circulated, particularly where the NOP was circulated many years before an EIR was prepared, as is the case here.

For the reasons explained above, CBE requests that DTSC not issue a Notice of Determination, that DTSC re-designate the City as the lead agency for the Project, and that the City re-start the environmental review process in coordination with initiation of the Tanner Act community involvement process, after ISOCI submits a new CUP application. CBE also requests that DTSC include in the Permit a special condition that the Permit will terminate unless ISOCI submits a new application for a local land use permit within 30 days and takes affirmative steps to obtain the local land use permit within an appropriate time period.

#### **U. Statement of Overriding Considerations**

DTSC's Statement of Findings identifies a number of potentially significant impacts that cannot be mitigated to a level of insignificance, including NOx emissions associated with proposed expansion of the facility's operations and cumulative operational emissions of CO, VOC, NOx, Sox, and PM10. This Petition identifies a number of additional significant impacts, including greatly increased cancer risk. DTSC has improperly concluded that overriding considerations support approval of the Project despite these potentially significant environmental impacts.

DTSC's Statement of Overriding Considerations sets forth eight reasons why the benefits of the Project outweigh these significant environmental impacts. The first alleged benefit is that approval of the Project "will provide for a portion of the long-term hazardous treatment needs of the region." See Statement of Findings, Statement of Overriding Considerations, and Mitigation Measure Monitoring and Reporting Plan ("Statement of Findings"), pp. 6-7. The other seven alleged benefits minimize transportation, traffic, emissions, and risks, but do so by concentrating those impacts on the surrounding community, which already is environmentally impacted. See *id.*, p. 7.

A statement of overriding considerations must be based on a balancing of the project's "economic, legal, social, technological, or other benefits" against its unavoidable environmental risks. See CEQA Guidelines § 15093(a). The Statement of Overriding Considerations is premature because the proposed expansion of the ISOCI facility will require issuance of a CUP by the City of Los Angeles, thereby making the Project subject to the requirements of the Tanner Act. As discussed above, DTSC has made a final decision on the Permit, completed the CEQA process, and issued a Final EIR before the Tanner Act process is even scheduled to begin. DTSC cannot conclude that the Project's benefits outweigh its adverse environmental effects - which will be disproportionately borne by the community surrounding the facility - without obtaining meaningful community involvement and input. To do otherwise is premature, speculative, and not supported by substantial evidence.

Furthermore, DTSC cannot adopt a Statement of Overriding Considerations when feasible measures exist that could mitigate the potentially significant impacts associated with the proposed expansion and modification of the ISOCI facility. A number of mitigation measures

are identified in this Petition, but DTSC has failed to evaluate or require them. The Statement of Overriding Considerations is based on a Statement of Findings that concludes that “no additional feasible mitigation measures or alternatives to the proposed project, other than those already included in the Final EIR, have been identified that can further mitigate the potentially significant project impacts on air quality while meeting the objectives of the proposed project.” Statement of Findings, p. 6. As explained above, this statement is incorrect and there is no basis for the Statement of Overriding Considerations.

The Statement of Overriding Considerations must be supported by “substantial evidence in the record.” CEQA Guidelines § 15093(b). The Final EIR does not contain such evidence, and CBE is not aware of any documents that support DTSC’s alleged balancing of the benefits of the project. DTSC’s Statement of Overriding Considerations, which is improper because feasible mitigation measures exist, premature because meaningful input has not been obtained through the Tanner Act process, and not supported by substantial evidence because the Statement is based on clearly erroneous findings of fact and conclusions of law. It also raises important policy considerations about whether the benefit of providing a portion of the long-term hazardous treatment needs of the region justifies subjecting an environmentally impacted community to additional health risks, including significant cancer risk. CBE respectfully requests that DTSC withdraw the Statement of Overriding Considerations.

#### **VI. FAILURE TO RESPOND TO CERTAIN COMMENTS SUBMITTED ON BEHALF OF CBE**

In its Response to Comments, DTSC neither responded to nor acknowledged any of expert Julia May’s 28-pages of comments. *See* Exhibit B (Comments by Julia May dated Feb. 12, 2006). CEQA requires the lead agency to respond adequately to all comments on a Draft EIR. A lead agency’s failure to respond adequately to comments before approving a project frustrates CEQA’s informational purpose and could lead to invalidation of the approval. *See Rural Land Owners Association v. City Council* (1983) 143 Cal.App.3d 1013, 1021. Under CEQA, the lead agency must evaluate comments submitted on a DEIR and provide written responses to any “significant environmental issues” raised. *See* Public Res. Code § 21091(d). If the response makes important changes in the information found in the Draft EIR, the lead agency should revise the text in the body of the DEIR to reflect the changes, or include notes indicating the revisions in the margins of the Draft EIR. *See* CEQA Guidelines § 15088(c). The Final EIR must include the comments and recommendations that the agency received on the DEIR during the comment period; this may take a verbatim or summary form. *See* CEQA Guidelines § 15132(b). It must also include the lead agency’s response to “significant environmental points” raised during the review and consultation process. *See* CEQA Guidelines § 15132(d).

The agency’s written response to comments must describe the disposition of the significant environmental issues that the comments raised. *See* Public Res. Code §21091(d)(2)(B). *See also* CEQA Guidelines § 15088(b); *Rural Land Owners Association*, 143 Cal.App.3d at 1022. This is especially important when the lead agency’s position differs with the position propounded in the comment. *See* CEQA Guidelines § 15088(a). In this case, the agency must address the

comment's recommendations and objections in detail, and give reasons for the difference in viewpoints. *See id.*

In addition, 22 CCR § 66271.16 requires the lead agency to "briefly describe and respond to all significant comments on the draft Permit raised during the public comment period, or during any hearing." DTSC's failure to respond to the important issues raised in Ms. May's comments is inexcusable and renders the Final EIR inadequate. CBE construes this as acknowledgment by DTSC of the fundamental defects in the environmental impact analysis identified in the comments submitted by Ms. May.

Ms. May raised the following issues, among others, that other commenters did not address:

- 1) The DEIR underestimated earthquake danger and failed to evaluate significant potential impacts of earthquake-related fire, smoke, and hazardous air pollution. In particular, the DEIR did not evaluate earthquake damage other than complete structural collapse, did not evaluate serious fire risks from the facility's proposed storage of major quantities of hydrocarbons and on-site natural gas lines, improperly dismissed the fire risk from the facility's vast quantities of "non-ignitable" used oil and recycled, and did not adequately evaluate the potentially severe air pollution impacts from particulate matter and toxics that could be emitted during a fire at the facility.
- 2) The DEIR failed to evaluate floodplain hazards and their potential impact on drinking water, the Los Angeles River, and sewer discharge. Among other things, The DEIR incorrectly states that the facility is located outside a floodplain and contradicts statements in the Part B application about threats to shallow drinking water, groundwater, and the Los Angeles River. The DEIR also fails to evaluate low-concentration discharges of dioxins, PCBs, lead, mercury, and other toxins from the facility into the proposed sewer hookup.
- 3) The DEIR and Part B application contain contradictory statements regarding acceptance, storage, and treatment of PCBs, and the DEIR fails to evaluate the potential impacts of PCBs.
- 4) The DEIR fails to evaluate significant potential impacts on biological resources despite past evidence that runoff from the facility already may have impacted local ecology.

Ms. May's comments raise major, substantiated concerns about the environmental impact analysis and issuance of the Permit. DTSC's failure to take action to respond to these concerns in any way raises serious issues about the due process accorded to community commenters and about DTSC's failure to follow its own process.

This Permit cannot be issued and the EIR cannot be finalized with a Notice of Determination until the lead agency has completed an adequate environmental impact analysis. CBE requests that DTSC address the issues raised by Ms. May in her comments, revise the DEIR to analyze the potential impacts described above, adopt mitigation measures to address those impacts, and recirculate a new Draft EIR.

## VII. CONCLUSION

This Petition addresses a number of specific issues, including flaws in DTSC's public participation process and deficiencies in the Permit, supporting health risk assessment and environmental impact analysis. These issues are integral to the entire Permit, and many of them involve clearly erroneous findings of fact and conclusions of law or raise important policy considerations. CBE, ProUno and CCAT respectfully request that DTSC grant this Petition, set a briefing schedule for the appeal pursuant to 22 CCR § 66271.18(c), stay the Notice of Determination and refrain from issuing the Permit until the appellate issues identified herein are resolved favorably to CBE, ProUno and CCAT.

Very truly yours,

/s/

Adrienne L. Bloch  
**Communities for a Better  
Environment**

Jane Williams  
**California Coalition Against Toxics**

Felipe Aguirre  
**ProUno**

cc: Maureen F. Gorsen, DTSC Director  
Jose Kou, DTSC Southern California Permitting