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October 26, 2007

DTSC'S RESPONSES TO COMMENTS ON THE DRAFT STANDARDIZED HAZARDOUS WASTE FACILITY PERMIT FOR CLEAN HARBORS SAN JOSE, LLC RAIL SPUR TRANSFER FACILITY

Clean Harbors San Jose, LLC operates a hazardous waste facility that stores and transfers bulk liquid hazardous wastes. On October 4, 2005, DTSC published a public notice in the San Jose Mercury News to announce the start of a 45-day public comment period to solicit comments on the Draft Standardized Hazardous Waste Facility Permit and the Draft Negative Declaration. Clean Harbors submitted comments to DTSC in a letter dated November 17, 2005 to clarify information provided in its permit application and the Draft Permit. However, after the end of the public comment period, Clean Harbors re-designed its secondary containment system and made changes to its facility operations to address rail transfer related issues and to comply with the requirements of the City of San Jose's Fire Department. DTSC therefore revised the Draft Permit in response to Clean Harbors' redesign of its facility operations. DTSC reopened the public comment period for the Revised Draft Permit and the Revised Draft Negative Declaration. The second public comment period began on June 13, 2007 and ended July 30, 2007.

Clean Harbors' redesign of its facility operations and DTSC's revision of the Draft Permit have made it unnecessary for DTSC to respond to Clean Harbors' comments dated November 17, 2005. The following are DTSC's responses to comments received from Mr. Kevin Boles of the CPUC during the first public comment period and from Michael Marlowe of Clean Harbors during the second public comment period for the Revised Draft Permit.

I. Commenter: Kevin Boles of State of California Public Utilities Commission

Comment:

"As the state agency responsible for rail safety within California, we recommend that any development projects planned adjacent to or near the rail corridor in the County be planned with the safety of the rail corridor in mind. New developments may increase traffic volumes not only on street and at intersections, but also at at-grade highway-rail crossings. This includes considering pedestrian circulation patterns/destinations with respect to railroad right-of-way. Safety factors to consider include, but not limited to, the

planning for grade separations for major thoroughfares, improvements to existing at-grade highway-rail crossings due to increase in traffic volumes and appropriate fencing to limit the access of trespassers onto the railroad right-of-way. Of particular concern is the impact on the existing at-grade highway-rail crossings on Lenfest Road and Las Plumas Avenue. The above-mentioned safety improvement should be considered when approval is sought for the new development. Working with Commission staff early in the conceptual design phase will help improve the safety to motorists and pedestrians in the County."

Response:

DTSC appreciates your input and recommendation concerning safety on rail corridor and impact on traffic in connection with new developments. Although this facility has been in existence at the same location since 1987, DTSC analyzed all the potential environmental impacts from the facility operations, including factors concerning traffic, land use, resources, and health and safety hazards, for the purpose of issuing this permit. DTSC prepared a Negative Declaration and De Minimis Impact Findings in accordance with the California Environmental Quality Act (CEQA). This permit authorizes Clean Harbors to transfer hazardous wastes only from Clean Harbors' Berryessa Facility (main facility) to the rail tank cars located at this facility before hazardous waste is sent offsite for treatment or disposal. Neither new routes nor additional vehicle traffic, including rail or automobile, will be added to this project.

II. Commenter: Michael Marlowe, Facility General Manager, Clean Harbors San Jose, LLC

Comment #1: Revised Draft Permit, PART V - SPECIAL CONDITIONS APPLICABLE TO THE ENTIRE FACILITY, CONDITION 12

Condition 12 requires that nonhazardous waste be included in the volume calculation for the Facility. The Department does not regulate nonhazardous waste, and thus, nonhazardous waste should not be included in the volume calculations. As such, Clean Harbors requests that the Department delete the following sentence "Any nonhazardous waste located at the Lenfest Facility shall be included in the volume calculations."

Response #1:

DTSC disagrees with Clean Harbors' comment. The Transfer and Storage Unit is for storage and transfer of hazardous waste and is required to have adequate secondary containment capacity in accordance with California Code of Regulations, title 22, section 66264.175. Any amount or volume of non-hazardous waste placed into the Transfer and Storage Unit would reduce the available secondary containment capacity. For the purpose of clarifying this requirement, that portion of the permit condition has been revised to state: "Any non-hazardous waste placed within the Storage and

Transfer Unit must be included in the volume calculation for the secondary containment capacity.”

**Comment #2: Revised Draft Permit, PART VI - CORRECTIVE ACTION -
CONDITION 1(D)**

Part VI - Corrective Action - Condition 1(d) states "Within 45 days from the completion of the soil sampling, the Permittee shall submit to DTSC a report....." Clean Harbors is concerned that the laboratory may not be able to provide the analytical results in a timely enough manner for a technical report to be prepared and submitted to the Department. Clean Harbors requests that this condition be to "45 days from receiving the soil chemical analysis from the laboratory".

Response #2:

DTSC agrees with the comment. The permit has been revised accordingly.

Comment #3: Revised Draft Permit, FIGURE 2.

Clean harbors San Jose LLC, Rail Spur Transfer Facility Site Diagram includes the warehouse, which is not part of the Lenfest Facility, as described in Part IV, Physical Description. The permitted activities covered by the Standardized Permit are not conducted within this warehouse and therefore, this building and the surrounding lot not described by the permit should not be covered by the permit.

Response #3:

DTSC agrees with the comment. A hazardous waste facility, as defined in California Code of Regulations, title 22, section 66260.10, means all contiguous land and structures, other appurtenances, and improvements on the land used for the treatment, transfer, storage, resource recovery, disposal or recycling of hazardous waste. A hazardous waste facility may consist of one or more treatment, transfer, storage, resource recovery, disposal or recycling operational units or combinations of these units.” In this case, the facility consists of only the Storage and Transfer Unit as described in Part IV of this Permit. As noted, the Physical Description of the Storage and Transfer Unit does not include the warehouse and surrounding lot. The illustrations provided in Figure 2 and Figure 3 were meant to show the permitted unit in relation to other structures at the facility and were not meant to define the facility. Figure 3, showing the warehouse and the surrounding lot, was provided by Clean Harbors in its Standardized Permit Application. Figure 2 is a simplified version of Figure 3. The permit has not been revised to address this comment.

Comment #4:

In reviewing the hazardous waste codes associated with the permit, Clean Harbors noticed that numerous waste codes were not included in the permit. In addition, Clean

Harbors noticed that these waste codes were not included in the Standardized Permit Application for the Lenfest Facility. This was an oversight on Clean Harbor's part. As such, Clean Harbors would like to request that the following codes be added to the permit, in Tables 1 and 2, as appropriate. The list varies from the Part B Permit at the San Jose Berryessa facility, and some of the variances would unnecessarily restrict the activities of the facility to receive wastes that consist of, or may include small amounts of these wastes. The facility respectfully requests that the following waste codes be added to Table 1 and 2 for the following waste types to allow for compatibility between the Berryessa facility's ability to process waste, and the Lenfest Facility to receive and reship this waste.

Response #4:

The draft Permit and the CEQA documents were based upon the Standardized Permit Application and supplemental information submitted by Clean Harbors. Clean Harbors had ample opportunities to review and modify its Application during the permitting process. DTSC could not add numerous waste codes without evaluating the environmental impacts from these waste codes and without soliciting public comments on the additional waste codes. The public comment period was not the proper time or venue to request such a change. If Clean Harbors wants to add waste codes to the permit, it must follow the applicable provisions of California Code of Regulations to request a permit modification. The permit has not been revised to add any of the waste codes requested by Clean Harbors.