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December 20, 2012

**RESPONSES TO COMMENTS ON
THE DRAFT HAZARDOUS WASTE FACILITY PERMIT FOR
CLEANTECH ENVIRONMENTAL, INC.
5820 MARTIN ROAD
IRWINDALE, CALIFORNIA 91706**

Agritec International, Ltd., dba CleanTech Environmental, Inc. (CleanTech) applied to the Department of Toxic Substances Control (DTSC) for a hazardous waste facility permit (Permit) to construct and operate a used oil recycling facility. Once constructed, CleanTech is authorized to collect used oil from offsite generators (gas stations, oil changers, auto repair shops, etc.) and to consolidate and store the used oil in tanks at the facility. The used oil may then be treated by blending, gravity separation, and/or by adding a chemical reagent if necessary, to remove metals and enhance dehydration, to meet the recycled oil standards in California Law. If the recycled oil standards are met, the treated used oil would be certified as "recycled oil."

CleanTech will also collect drums of used oil, waste antifreeze, and non-RCRA wastewater and store them in a drum storage area. The liquid waste in containers may be pumped into the appropriate storage/treatment tanks. Additionally, CleanTech will collect drums of solid waste including solid waste contaminated with oil, oil/water separation sludge, contaminated soil with oil, contaminated containers, etc., and place the drums into the drum storage area. The solid waste may be consolidated in containers or roll-off bins. Once consolidated, the solid waste and any liquid waste in drums are shipped to an authorized offsite recycling, treatment, or disposal facility.

DTSC reviewed the permit application and prepared a draft Permit. DTSC also completed an initial Study and proposed to issue a Negative Declaration to comply with the California Environmental Quality Act (CEQA).

On November 18, 2011, DTSC published a public notice in the San Gabriel Valley Tribune (an English language newspaper) and La Opinión (a Spanish language newspaper) to announce the start of a 45-day public comment period to solicit comments on the Draft Permit and proposed Negative Declaration. Copies of the fact sheet (in English and Spanish) were mailed to the facility mailing list. A paid public notice announcing the public comment period was aired on a local radio station. The public comment period ended at January 9, 2012. On January 9, 2012, Stenson Engineers representing the Main San Gabriel Basin Watermaster and Teresa Young

requested an extension to submit comments. DTSC granted an extension to February 3, 2012. Public comments were received by electronic mail and postal mail.

On May 18, 2012, DTSC published a second public notice, requesting public comments regarding changes to the draft permit which clarified the facility size and set a limit for hazardous waste treated or recycled each month at less than 1,000 tons and for public comment on a revised Initial Study.

This document responds to those comments received during the both public comment periods. Those comments received during the first public comment period are designated by a prefix of "I" and those comments received during the second public comment period are designated by a prefix of "II" (e.g., I-1-1 or II-1-1). DTSC excerpted the written comments received. The person who made the comments is identified and his/her comments are shown after the person's name. DTSC's response to each comment is in italics.

If you have any questions regarding this Response to Comments, please contact Richard Driscoll at 916-323-2942.

The following comments were received during the first public comment period:

Commenter #1: Mark T. Gallagher

Comment #I-1-1:

We appreciate the opportunity to review and submit public comments to the Department of Toxic Substances Control ("DTSC") in response to the Draft Hazardous Waste Facility Permit and Proposed Negative Declaration for the CleanTech Environmental Inc. Hazardous Waste Storage, Transfer, and Treatment Facility to be located at 5820 Martin Road, Irwindale, California (the "Project").

We have reviewed the Proposed Negative Declaration and Hazardous Waste Facility Permit. The attachment includes our specific comments on both. However, the Negative Declaration was so cursory and opaque that it was very hard to analyze all of the potential environmental impacts of the proposed Project. The attachment presents our initial thoughts, but we reserve the right to submit further comments as we learn more about the Project. In sum, the Negative Declaration is wholly inadequate under the California Environmental Quality Act ("CEQA") and the Project presents a substantial danger to the community of Irwindale, natural resources in the area, and water and air resources. The failure of DTSC to disclose the fact that this facility is located adjacent to a Significant Ecological Area, the Santa Fe Dam Recreational Area, is particularly egregious. This is material new information, and the revised CEQA document—which must be a full environmental impact report—must be recirculated to the public and to the appropriate trustee and responsible agencies.

A full environmental impact report must be prepared before the Project can be considered for approval.

Response #I-1-1:

The Department of Toxic Substances Control (DTSC) conducted an Initial Study, as required by the California Environmental Quality Act (CEQA) and assessed environmental impacts in 17 environmental categories (aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public services, recreation, and utilities and service system) associated with the project.

*In section 4 - Biological Resources, section 9 - Hydrology and Water Quality, and section 15 – Recreation of the Initial Study, DTSC acknowledges that the project is near the Santa Fe Dam Recreational Area (SFDRA). DTSC admits the distance from the project to the SFDRA is inconsistent in the Initial Study. Section 4 of the Initial Study states that the SFDRA is one mile from the project. Section 9 states it is 0.25 miles and section 15 states it is less than one mile. The project is approximately 0.5 miles to the paid parking lot entrance north of intersection of Azusa Canyon Road and West Arrow Highway. DTSC does not believe the distance from the project to the SFDRA will change the findings of the Initial Study because DTSC cannot foresee any reasonable pathway for waste at the facility to impact the SFDRA. **(The distance from the point of reference has been corrected in the revised Initial Study.)***

The wastes to be handled at the facility consist primarily of used oil and waste antifreeze. These types of waste are of relatively low hazard risks. Used oil and waste antifreeze have low vapor pressures and are not considered a significant source of volatile organic emissions. The facility will be using a cold treatment process to treat used oil. No heat or burning of any fuel will be used to treat the used oil. Therefore, air emissions will have a less than significant impact.

Design and operational measures described in the Permit Application will be in place to prevent spills or to ensure that releases would not affect the environment. All hazardous waste activities (storage and treatment in tanks and storage in containers) will be conducted inside a warehouse building. The facility will have bermed concrete containment areas around the storage tanks and container storage areas. Loading and unloading areas will be sloped to sumps to contain spills and releases. Two and one-half inch rollover concrete berms will be constructed at the truck entrances of the warehouse to prevent any spills or leaks from leaving the warehouse. Measures to minimize the potential for accidental releases include weekly inspections of the hoses and daily inspections of the tanks and secondary containment systems. Before transferring waste into the tanks, facility personnel will use the tank sight gauges to measure and ensure there is sufficient capacity in each tank. Facility personnel will supervise waste transfer activities to ensure there are no overfills. The facility will have also a Contingency Plan that outlines the response procedures facility personnel must follow in the event of a release. Additionally, all personnel at CleanTech will go through emergency training to minimize the risk of exposure to themselves and the public in the event of a tanker spill.

DTSC also cannot foresee any reason why truck traffic would enter the SFDR as the main roads (First Street and North Irwindale Road) to the freeway (Interstate 210) is east of the facility which is the opposite direction of the SFDR.

In addition to the Initial Study, DTSC conducted a detailed review of the applicant's permit application. Numerous documents have been returned for revision or response to DTSC comments. Analyses by DTSC are conducted pursuant to DTSC and U.S. EPA guidance documents and statutory standards, including but not limited to:

- * California Hazardous Waste Control Law*
- * California Environmental Quality Act*
- * California Code of Regulations, Title 22, Division 4, Environmental Health*
- * California Code of Regulations, Title 14, Section 15000 et seq.*
- * Test Methods for Evaluating Solid Waste, Third Edition, SW-846, Office of Solid Waste*
- * Waste Analysis Plans Guidance Manual, Office of Solid Waste, Document No. OSW-0000846*
- * California Environmental Quality Act Initial Study Workbook, July 2011.*
- * Permit Applicant's Guidance Manual for the General Facility Standards of 40 CFR 264*

The determination to prepare an Environmental Impact Report or a negative declaration is based upon the findings of the Initial Study and the review of the permit application. The Initial Study indicates that there is a lack of evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment. Therefore, a Negative Declaration was prepared and circulated in accordance with the CEQA Guidelines.

EXECUTIVE SUMMARY

Comment #I-1-2:

CleanTech has applied for a permit to develop a hazardous waste facility ("Project") at 5820 Martin Road in the City of Irwindale. The permit would be to "to construct and operate a hazardous waste storage, transfer, and treatment facility" to "collect, store, and treat used oil from offsite generators." Properly handling hazardous waste is important, and we do not oppose a hazardous waste treatment facility that is fully analyzed and that mitigates its impacts. However, the issuance of a negative

declaration for a hazardous waste facility with virtually no meaningful analysis and no mitigation measures is completely inappropriate, particularly where the facility is located next to a Significant Ecological Area.

Many projects of lesser potential impacts—such as retail centers and housing developments—frequently require full environmental impact reports (“EIR”) under the California Environmental Quality Act (“CEQA”). It is incomprehensible that the Department of Toxic Substances Control (“DTSC”), the agency charged with protecting the environment and communities, would attempt to site a hazardous waste treatment facility through a negative declaration, with no mitigation measures, next to the Santa Fe Dam Recreational Area (“SFD Recreational Area”), a designated Significant Ecological Area.

As detailed in this letter, the Project may have significant environmental impacts, many of which are not even considered in the Initial Study. Before this Project is even considered, an EIR needs to be prepared that fully analyzes potential impacts of a hazardous waste facility and mitigates all potential impacts.

Response #I-1-2:

Although the proposed facility is located in a highly industrial setting, biological resources can still be found in such locations. While threatened, rare, and/or endangered species were identified within the general area of proposed facility, no sensitive habitat exists which can sustain these species. A California Department of Fish and Game Natural Diversity Database search was conducted in order to identify potentially impacted species. No species listed in this search are located in or immediately around the proposed facility site.

DTSC does not have jurisdiction over the siting of hazardous wastes management facilities. Siting of hazardous wastes management facilities is usually within the jurisdiction of the local planning agency. In this case, the local planning agency was the Irwindale Planning Department. Once a facility has been sited and an application for a permit submitted to DTSC, DTSC is obligated to review the application to ensure that the proposed project would be operated in a manner that is safe and protective of human health and the environment and to make a determination on the application.

Comment #I-1-3:

- The Project is located next to one of the most sensitive environmental resources in the San Gabriel Valley and potential impacts on resources have not been analyzed. The 836-acre SFD Recreational Area is one of the most sensitive areas in the region. It has been designated by the County of Los Angeles as a Significant Ecological Area, a fact completely omitted from the Initial Study. The Initial Study has failed to analyze the full range of potential environmental impacts on this sensitive resource.

Response #I-1-3:

DTSC acknowledged that the project is located near the SFRDA in various sections of the Initial Study and determined, after reviewing various documents such as the Permit Application, the Department of Fish and Game Database, and the neighboring Veolia Initial Study, and due to the project's proximity, nature of waste, and type of operation, that the project will not have a significant impact on the environment.

Also see Response to Comments #I-1-1 and #II-1-8.

Comment #I-1-4:

- The Project will have significant environmental impacts that were inadequately analyzed and disclosed under CEQA. The Project places the nearby community at risk due to a series of improperly analyzed potential environmental impacts associated with the Project. The Initial Study has failed to disclose the range of sensitive receptors within proximity to this hazardous waste facility. The Project threatens to jeopardize air and water quality, lead to noise pollution, and increase traffic in the surrounding areas. The Initial Study fails to adequately analyze and disclose these environmental impacts and the effects on the neighboring communities.

Response #I-1-4:

DTSC believes the Initial Study studied the possible impacts of the project and due to its proximity, nature of waste, and type of operation, that the project will not have a significant impact on the environment.

Also see Response to Comments #I-1-1, #II-1-19, and #II-1-20.

Comment #I-1-5:

- Inadequate CEQA review leaves significant aspects of the Project unknown and unanalyzed. The Initial Study does not analyze all reasonably foreseeable effects of the Project, including wastewater that may be discharged into sanitary sewers, and spills or leaks of oil or other hazardous substances. Significantly, the Initial Study does not perform a comprehensive analysis of potential accidents, leaks and spills.

Response #I-1-5:

DTSC believes the Initial Study adequately analyzed effects of the projects, including accidents, leaks, and spills, and determined that the project will not have a significant effect on the environment. There is no discharge of wastewater to the sanitary sewers.

If CleanTech chooses to discharge wastewater to the sanitary sewers in the future, CleanTech will be required to obtain all applicable permits from the local sanitation agency.

Also see Response to Comment #I-1-1 and #II-1-11.

Comment #I-1-6:

- Local land use issues are ignored. The Initial Study fails to consider the General Plan and zoning designations for the Project site. The Initial Study fails to perform a complete analysis required to make significance determinations regarding the General Plan or to determine consistency with zoning requirements.

Response #I-1-6:

Prior to submitting an application to DTSC for a permit, DTSC advised CleanTech to contact the City of Irwindale Planning Department to inquire whether a Conditional Use Permit was required. On June 23, 2010, the City of Irwindale Planning Department determined that the CleanTech's proposed use is appropriate for the M-2 (Heavy Manufacturing) zone. The intensification of the existing use is permitted by right and would not be subject to a Conditional Use Permit as determined under IMC Section 17.48.010.35 "Warehouses, wholesale businesses and storage buildings (no outside storage)."

After receiving this comment, DTSC contacted the City of Irwindale Planning Department directly to inquire whether the CleanTech project was properly zoned and whether a Conditional Use Permit was required. On January 30, 2012, the City of Irwindale sent DTSC a letter reaffirming the prior determination made by the City of Irwindale Planning Department staff in June 2010 and that the proposed CleanTech would fall under the City's M-2 (Heavy Manufacturing) Zone for uses permitted by right, which do not require a conditional use permit. The prior determination was reaffirmed after review by the City Attorney and the Community Development Director/Redevelopment Consultant.

Land use decisions are outside DTSC's jurisdiction and the authority to determine compliance with local requirements is vested in various local agencies, which are duly empowered to consider issues and applications before them and to bring enforcement actions against those in non-compliance. DTSC respects the regulatory jurisdiction of other agencies and has included a general requirement as a condition of the Permit. Therefore, it would be inappropriate for DTSC to assume that a land use permit would have been required and must defer to the local agency to decide such matters within its jurisdiction.

Also see Response to Comments #II-1-3.

Comment #I-1-7:

- General Plan Amendment is required and the Project is inconsistent with the zoning code. The Project site is not designated as a regulated site for hazardous waste and as such, a General Plan Amendment is required. Moreover, the City's zoning code does not allow hazardous waste processing, like the Project would conduct. The Project cannot be considered unless the City amends its zoning code to allow hazardous waste processing. Even if the zoning code were amended to allow the Project, the Project would require a discretionary conditional use permit ("CUP") from the City. The Initial Study fails to demonstrate that the City could make the required findings to approve such a CUP.

Response #I-1-7:

See Response to Comments #I-1-6 and #II-1-3.

Comment #I-1-8:

- The City should be the Lead Agency. DTSC was improperly designated as the Lead Agency in the Initial Study. Because the City of Irwindale must amend its zoning code, amend its General Plan, and grant a CUP if the Project is to proceed, it should be designated as the Lead Agency. The City of Irwindale has the far greater role in evaluating the potential impacts of this project and is being usurped by the limited DTSC process. It is clear that DTSC's limited analysis reflects its lack of understanding of the local community and local land use issues. How could DTSC have missed that the proposed site is literally next door to a Significant Ecological Area??

Response #I-1-8:

The Public Resources Code, Section 21067 defines "Lead Agency" as the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment. Since there was no project requiring approval before the City of Irwindale, DTSC is the appropriate Lead Agency for this project in accordance with California Code of Regulations, Title 14, Chapter 3, Article 14.

It is not true that DTSC missed the fact that the proposed site is "literally next door to a Significant Ecological Area." DTSC did acknowledge in various sections of the Initial Study that the proposed site is near the SFDRA. DTSC did not provide any specific analysis of the project on the SFDRA because DTSC does not believe there is any reasonable pathway for the project to impact the SFDRA. Please see Response to

Comments #I-1-1 for a detailed explanation. Therefore, DTSC determined that the project will have no impact on the Santa Fe Dam Recreation Area.

Comment #I-1-9:

- The Project is an area of concern for future groundwater contamination. The Project overlays the San Gabriel Groundwater Basin, an area identified by the Watermaster as an area of concern for future groundwater contamination. Due to the shallow nature of groundwater under the Project and the high porosity of the soil, any contamination leaking from the Project could spread quickly and easily into Irwindale's groundwater resource. The Initial Study fails to analyze this issue.

Response #I-1-9:

As noted in the section 9 of the Initial Study, DTSC acknowledged that the project is located over the San Gabriel Groundwater Basin aquifer; however, the project will not be built on bare soil. The project has several design features to ensure no hazardous wastes leave the facility in case of a spill, leak, or accident. The facility will be built on an 8 inch concrete foundation. The foundation will be coated with an epoxy coating to make it impervious. All operations are conducted indoors. As specified in Section IV of the Permit Application, the tanks will have secondary containment system capable of holding 33,600 gallon, more than 42% required by regulations. All tanks are UL listed and will be located aboveground. The tanks will also be elevated so that any leaks will be found during daily inspections. Any tanks with leaks must be taken out of service immediately, repaired, and recertified by a professional engineer before being put back into service. The floors of the facility are sloped away from any entrances toward sumps. The sumps are checked daily and any leaks are pumped into a holding tank. The tanks has high level alarms and automatic cutoff values to ensure no overflow occurs. The entrances of the loading/unloading areas are equipped with berms to prevent rain from coming into the facility and any liquids from leaving the facility. All container storage areas will also have secondary containment systems. Therefore, these above design elements of the project make the shallowness of the groundwater or the porosity of the underlying soil irrelevant.

The facility is required to have a contingency plan in place to address any spills, accidents and fires. The contingency plan was distributed to the local fire department, police department, and nearby hospitals.

The Main San Gabriel Basin Watermaster contacted DTSC requesting an extension to review the project and submit comments. DTSC granted the Watermaster the requested extension. The Watermaster comments and DTSC's response to those can be found under Commenter #4.

Comment #I-1-10:

- The Project is located in an area prone to significant flooding. The Project is located at the base of the San Gabriel Mountains and adjacent to the San Gabriel River. This area has seen flooding in the past and the Initial Study acknowledges the potential for flooding, but the Initial Study fails to analyze the potential impacts of such flooding.

Response #I-1-10:

As discussed in section 9.g of the Initial Study, the Flood Insurance Rate Map (Los Angeles County, California, and incorporated areas, Panel 1700 of 2350, Map Number 06037C1700F, effective date of September 26, 2008) shows that the CleanTech Facility is not within a 100-year floodplain. The CleanTech Facility is within an area identified as "Zone X" and outside the area designated as 0.2% annual chance of flood. A letter from the Los Angeles County Flood Control District dated December 20, 1982, documents that the neighboring Veolia site (about 200 feet east of the CleanTech Facility) is "reasonably free of flood hazard from major channels and streams, but may be subject to local flood hazard". Because of the geological, hydrological, and topographical similarities to the Veolia facility, it can be assumed that CleanTech Facility will also be reasonably free of flood hazard from major channels and stream, but may be subject to local flood hazard.

If local flooding were to occur, all hazardous waste operations are conducted indoors. The entrances of the facility are equipped with 2.5" berm which will keep any flood water from entering the building. The majority of the waste will be stored in aboveground tanks surrounded by a 20" concrete berm. The berm acts as secondary containment to keep any leaks and spills from leaving the area but will also prevent any flood water from entering the tank area.

Therefore, DTSC determined that the impacts from flooding will not be significant.

Comment #I-1-11:

THE PROJECT'S POTENTIAL ENVIRONMENTAL EFFECTS HAVE NOT BEEN FULLY ANALYZED

The Initial Study is completely inadequate as an environmental review. Under CEQA, negative declarations, like the one DTSC has prepared for the Project, are disfavored. "If there is substantial evidence in the whole record supporting a fair argument that a project may have a significant nonmitigable effect on the environment, the lead agency shall prepare an EIR, even though it may also be presented with other substantial evidence that the project will not have a significant effect."¹ This standard for when an

¹ *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.

EIR must be prepared is easily met—it does not require showing that environmental impacts will occur, only that there is a fair argument that they may occur.²

EIRs are also favored because they are the only way of assuring that the full environmental consequences of a project are disclosed to the public and decisionmakers.³

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account.

Unless an EIR is prepared for the Project, a hazardous waste treatment facility will be permitted by DTSC without the full disclosure to the community and decision makers of the existing environment and the potential environmental impacts and without adequate information to debate the merits of the Project.

Under CEQA, it is the lead agency, not the public, that must analyze the Project's environmental impacts: "We also agree with plaintiffs that, under CEQA, the lead agency bears a burden to investigate potential environmental impacts."⁴ Thus, the failure to disclose information about the Project and to study the issues discussed below is itself a violation of CEQA.

To conduct an adequate environmental review for the Project, an EIR must be prepared. CEQA requires the environmental review to disclose the baseline conditions.⁵ As discussed further below, the Initial Study is inadequate because it fails to describe baseline conditions for several environmental resources, particularly the SFD Recreational Area.

The CEQA review must analyze all of the Project's reasonably foreseeable consequences.⁶ Here the analysis is inadequate because it fails to describe the existing environment and fails to analyze many of the Project's reasonably foreseeable consequences, including oil spills from accidents and potential impacts to sensitive environmental resources.

² *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

³ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449 (citation omitted).

⁴ *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1597.

⁵ *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 315 ("To decide whether a given project's environmental effects are likely to be significant, the agency must use some measure of the environment's state absent the project, a measure sometimes referred to as the 'baseline' for environmental analysis.").

⁶ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 398.

The CEQA review must also consider the Project's cumulative impacts—that is its impacts considered together with the impacts from other past, present, and reasonably anticipated future projects.⁷ There are other facilities that generate, store, or use hazardous waste in the vicinity of the Project, but the Initial Study fails to even identify them, let alone analyze their cumulative impacts. The Initial Study is devoid of cumulative impact analysis, and therefore violates CEQA and fails to disclose the true extent of the Project's impacts.

The lead agency must also analyze alternatives to the Project.⁸ This is especially critical here, where the Project has many environmental problems. An alternatives analysis is required to show alternatives to this location, sizing of the facility, or other design considerations.

The lead agency must also adopt mitigation measures to mitigate the Project's potentially significant environmental effects.⁹ The Initial Study is defective because it does not include ANY mitigation measures, and an EIR must be prepared that includes feasible mitigation measures for all of the Project's significant environmental impacts.

All the specific resources discussed below must be analyzed and mitigated in a full EIR that meets all of these requirements.

A. An EIR Must Analyze the Project's Potential Effect on Nearby Sensitive Habitats and Resources

Significantly, the Project is located about 1000 feet northeast of the SFD Recreational Area.¹⁰ The SFD Recreational Area is a 836-acre open space with a 70-acre lake, nature center, nature trails, environmental resources, sports fields, and a children's water play area. The SFD Recreational Area is a Significant Ecological Area.¹¹ This is a special designation that the County of Los Angeles gives "to designate critical components of the biodiversity of Los Angeles County."¹² It is also part of the San Gabriel Watershed and Mountains Special Resource Study, conducted by the National Park Service.¹³ "Santa Fe Dam Recreational Area is nestled at the foot of the San Gabriel Mountains and is considered one of the many hidden jewels of Southern

⁷ *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 740.

⁸ *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1353.

⁹ *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 376.

¹⁰ CEQA Initial Study for CleanTech Hazardous Waste Facility at 28.

¹¹ County of Los Angeles, Map of Significant Ecological Areas, http://planning.lacounty.gov/assets/upl/data/map_t02-sea-2-2010.pdf, attached hereto as Exhibit A.

¹² Los Angeles County Department of Regional Planning, <http://planning.lacounty.gov/view/sea-existing>.

¹³ National Park Service, San Gabriel Watershed and Mountains Special Resource Study, Newsletter 2 (Aug. 2005), http://www.nps.gov/pwro/sangabriel/San_Gabriel_SRS_news2.pdf.

California.... The facility is home to many protected native plants and animals....”¹⁴
The park attracts neighborhood families, city residents, and a large number of tourists for swimming, picnics, year-round fishing, boating, bicycling, walking, horse riding, and youth group camping. The SFD Recreational Area also provides habitat for many species. In addition to welcoming countless numbers of Californians to explore and enjoy wildlife and tranquility, the SFD Recreational Area is also home to many protected native plants and animals, including the threatened California Gnatcatcher.

As Figure 2 demonstrates, the proposed Project is literally next door to the SFD Recreational Area. Approval of the Project without proper analysis and mitigation endangers this invaluable natural and community resource. Children playing in the water, families picnicking under the trees, friends on fishing trips, and the protected wildlife all will be only about 1,000 feet from a hazardous waste facility that stores and chemically treats used oil, oil contaminated soil, and other hazardous substances.

Despite the potential significance of environmental impacts on this treasured resource, an analysis of impacts to the SFD Recreational Area facility is completely absent from the Initial Study. While the Initial Study recognizes the SFD Recreational Area and the sensitive species that inhabit the SFD Recreational Area, there has been



no assessment of risks to the SFD Recreational Area, or the sensitive species that live there, presented by operations of the facility, truck traffic to and from the facility, and reasonably foreseeable events like spills or other catastrophic events. Because of the potential for devastating effects on the SFD Recreational Area, these risks must be assessed in an EIR. Also, a health risk assessment of the facility’s likely impacts on the health of people using the SFD Recreational Area for picnics, hiking, and other activities should be conducted. These studies and assessments are critical to complete before the proposed facility receives a permit because of the potential that any effects caused by the facility may be irreparable and persistent. Similarly, the Irwindale public park, which is home to nightly concerts, picnic areas, and play areas, is unmentioned in the Initial Study despite its 1.5 mile distance from the Project.

¹⁴ County of Los Angeles, *Santa Fe Dam Recreational Area*,
http://parks.lacounty.gov/Parkinfor.asp?URL=cms1_033344.asp&Title=Santa%20Fe%20Dam%20Rec%20Area.

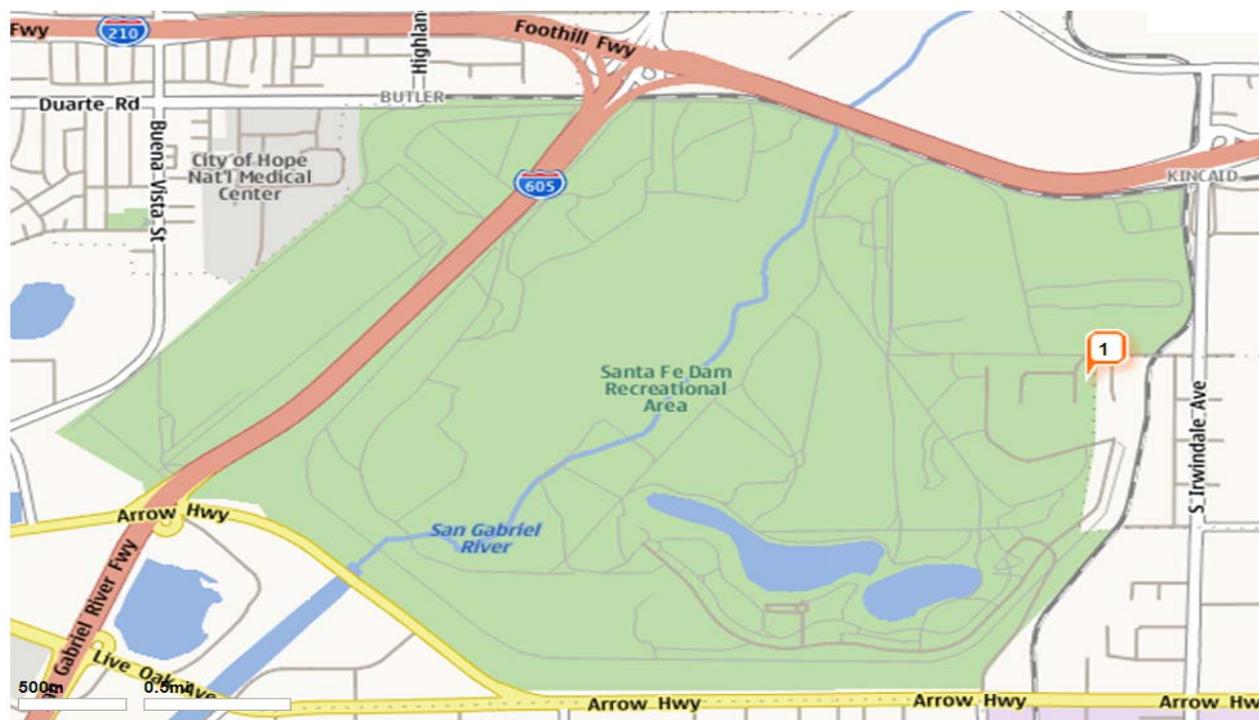


Figure 2. The SFD Recreational Area with 5820 Martin Road, Irwindale, CA indicated with the flag marked “1.” Source: Yahoo! Maps.

B. An EIR Must Analyze the Project’s Potential Impacts to Biological Resources

The adjacent SFD Recreational Area is a Significant Ecological Area. There are several endangered plant species in the City of Irwindale including Braunton’s Milk-Vetch, the Slender-Horned Spine Flower, and the San Gabriel Mountain Dudleya. There are also several sensitive species of wildlife, known to inhabit the valuable alluvial shrub and evergreen habitat in Irwindale, which have the potential of becoming listed as threatened or endangered. Such species include the Northern Harrier, the Spark-Shinned Hawk, the Osprey, Cooper’s Hawk, the Prairie Falcon, the Burrowing Owl, the California Black-Tailed Gnatcatcher, the Coast Horned Lizard, the Yellow Warbler, and the Yellow-Billed Cuckoo.¹⁵

The City’s General Plan also recognizes the SFD Recreational Area as an important resource for recreation, habitat, endangered species preservation, and open space.¹⁶ The General Plan contains numerous Resource Management Policies that the Project appears to conflict with, and that the Initial Study failed to evaluate, including the following:

¹⁵ City of Irwindale General Plan Update at 114-15.

¹⁶ City of Irwindale General Plan Update at 109-110, 114.

- Resource Management Element Policy 4. The City of Irwindale will continue to protect the use of the area's resources through appropriate land use controls and planning.
- Resource Management Element Policy 5. The City of Irwindale will maintain and improve the existing park facilities in the City for the benefit and enjoyment of future generations.
- Issue Area – Resource Preservation. The City of Irwindale will maintain and preserve those natural and man-made amenities that contribute to the City's livability.
- Resource Management Element Policy 13. The City will encourage environmental considerations and the City's discretionary authority over land use entitlements
- Resource Management Element Policy 19. The City of Irwindale will consider environmental justice issues as they are related to potential health impact associated with air pollution and ensure that all land use decisions, including enforcement actions, are made in an equitable fashion to protect residents, regardless of age, culture, ethnicity, gender, race, socioeconomic status, or geographic location from the health effects of air pollution.

An EIR must be prepared that evaluates the Project's consistency with these policies, particularly given the Project's location adjacent to the rich natural resources in the SFD Recreational Area.

In analyzing the impacts of the Project on biological resources, the Initial Study states that although there are "a number of threatened, rare, and/or endangered species [that] are identified as being located with the general area of the Facility . . . the Facility and surrounding area is highly urbanized and does not have any sensitive habitat impact." The only study actually performed was a Rarefind Search. This is an inadequate analysis of the potential effects of the Project on biological resources, including nearby threatened and endangered species. Even if the area surrounding the Project could be considered only "urban," an assumption which is highly contested due to the nearby location of the SFD Recreational Area, the Project may nonetheless have impacts on species of concern. Further, species are mobile; performing a Rarefind Search is not sufficient to ensure that sensitive species are not harmed by a project. Considering the importance we place on protecting our State's and Country's threatened wildlife, a more thorough analysis of the impacts on sensitive species is required particularly in light of the fact that one of the region's most sensitive environmental resources is a mere 1,300 feet away. If the Project is allowed to be approved without sufficient consideration of the effects on nearby sensitive, threatened, and endangered species, it may contribute to the ultimate extinction of these valuable species. An EIR needs to be prepared that analyzes the Project's potential impacts on each of the species listed above, including the impacts of accidental spills or other releases from the Project site.

The California Endangered Species Act declares that species of fish, wildlife, and plants, which are in danger of or threatened with extinction because of man's activities, are of significant ecological, educational, historical, recreational, esthetic, economic, and scientific value to the people of the State. Accordingly, the conservation, protection, and enhancement of these species and their habitats is of statewide concern.¹⁷ The California Endangered Species Act, as well as the United States Endangered Species Act, prohibit the taking of endangered or threatened species without an Incidental Take Permit.¹⁸ "Taking" means harassing, harming, wounding, or killing any endangered or threatened species.¹⁹ Considering the proximity of the proposed hazardous waste facility to a number of endangered plants and sensitive species of wildlife that have the potential of becoming listed or endangered, there exists a high potential that the Project will result in a "taking." These potential impacts to important resources must be analyzed and appropriate mitigation measures adopted in order to ensure that the Project does not jeopardize the continued existence of any of these valued species.²⁰

C. An EIR Must Analyze the Project's Potential Effect on Nearby Community Resources

The area surrounding the proposed Project contains important community resources and sensitive populations that stand to be affected by the Project's hazardous waste operations and the potential environmental effects described in this section. Vivas Magdalena Daycare and Arberry Family Daycare are less than a mile and a half from the Project site. In addition, at least fourteen other daycare facilities are three miles or less from the proposed Project.²¹ Mt. Olive High School, Pleasant View Elementary School, Valleydale Elementary School, Andres Duarte Elementary School, Paramount Elementary School, and Mountain View Elementary School are all within 1.5 miles of the proposed hazardous waste facility. Over twenty other schools are within 3 miles of the proposed Project.²² The Edgewood Center Nursing Home is only 1.7 miles from the Project, and approximately ten other nursing homes, assisted living centers, senior living centers, or rehabilitation centers are within 3 miles of the proposed Project.²³ The Irwindale Public Library is only 1.2 miles from the proposed Project, the Elks Lodge Community Center is only a mile and a half, and Our Lady of Guadalupe Mission is only a mile from the proposed Project. The Initial Study portrays the neighborhood as purely industrial and does not consider, much less mention, the effects the Project may have on these vital community resources. A formal scientific study must be performed that

¹⁷ Cal. Fish & Game Code § 2051.

¹⁸ See Cal. Fish & Game Code § 2081; 16 U.S.C. § 1538-1539.

¹⁹ 16 U.S.C. § 1532 (19).

²⁰ EPA, Summary of the Endangered Species Act, <http://www.epa.gov/lawsregs/laws/esa.html>; California Department of Fish & Game, California Endangered Species Act, <http://www.dfg.ca.gov/habcon/cesa/>.

²¹ See Exhibit B for the full extent of nearby daycare centers.

²² Exhibit C demonstrates nearby local schools.

²³ Exhibit D demonstrates nearby nursing homes, assisted living centers, senior living centers, or rehabilitation centers.

analyzes the impacts of the Project on all these sensitive receptors and community resources. All of these locations and sensitive populations are near enough to the proposed Project that they face significant danger from any air, water, noise, or transportation pollution potentially caused by the Project as well as impacts from spills or other potential releases from the proposed facility. An EIR must be prepared that analyses the Project's potential impacts on all of these sensitive receptors.

D. An EIR Must Analyze the Project's Potential Traffic Impacts

The traffic impact analysis in the Initial Study is fatally flawed, thus calling into question the finding of less than significant impacts. The traffic impact analysis does not utilize an expert traffic study. Instead, the Initial Study simply concludes that because the number of truck and vehicular traffic trips will increase only slightly, traffic impacts will be less than significant. Not only is this conclusion based on pure speculation, but it is also incorrect.

The Initial Study states that traffic is already significant in the Project area. The Level of Service is identified as Level D, meaning that "small increases in traffic flow may cause substantial increases in delay." The Initial Study then hastily concludes that because the Project will create only a small increase in the number of vehicles, the Project is not expected to cause a significant increase in traffic flow.²⁴ This explanation is faulty and nonsensical. Indeed, CEQA prohibits this type of analysis, which trivializes existing environmental problems.²⁵ Because the Project will operate in an area with a Level D Level of Service, any small increase, including an increase of eighteen large trucks per day, has the potential to cause substantial increases in delays and decreases in travel time. Moreover, no mitigation measures are required to restrict the number of truck trips on any given day. Thus, the actual number of trips from trucks, employees, vendors and others to the Project site may in fact be significantly larger. These potential impacts must be analyzed in an EIR.

E. An EIR Must Analyze the Project's Potential Air Impacts

The Initial Study's analysis of air quality is inadequate for a number of reasons. First, the Initial Study's assumptions of no impact are not justified. The study contains an insufficient explanation as to how expected emissions from the Project, especially operational emissions, were calculated. Conclusions of less than significant impact were made without any air studies, and modeling data is not provided. Generally, the entire air impacts analysis, including the analysis of greenhouse gas emissions, is

²⁴ CEQA Initial Study for CleanTech Hazardous Waste Facility 37 (Nov. 8, 2011) ("As noted in the Environmental Setting, the Level of Service for North Irwindale Avenue between First Street and Gladstone Street is identified as Level D. Level D borders on a range in which small increases in flow may cause substantial increases in delay and decreases in travel time. If approved, the project will increase the maximum vehicle traffic to the Facility. This increase in vehicle truck traffic is not expected to significantly increase the daily traffic flow because there will be only small increase in the number of vehicles.").

²⁵ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718 (rejecting impact analysis nearly identical to DTSC's traffic analysis for the Project: "In simple terms, the EIR reasons the air is already bad, so even though emissions from the project will make it worse, the impact is insignificant.").

vague, opaque, and comprised of conclusory statements that are unsupported by factual evidence.

Second, indoor air quality at the facility was not studied. This is an essential component of air quality analysis. Higher than acceptable levels of indoor air contaminants have been demonstrated to cause headaches, shortness of breath, fatigue, hypersensitivity and allergies, dizziness, coughing, nausea, or more permanent ailments for workers who are continuously exposed to the air in industrial facilities.²⁶ The compounds stored at the Project site, as well as the chemicals used to recycle oil could release gases, toxic vapors, and odors within the warehouse that may affect the health of workers within the facility. DTSC cannot make an accurate finding that the Project has a less than significant impact on air quality without examining indoor air quality.

Third, the Initial Study does not analyze the impacts of odors from the Project, a key issue for any air impacts analysis. Numerous sources indicate that oil recycling facilities create strong odors, suggesting that the air quality impact of the Project associated with emanating odors may potentially be significant. In February 2000, the Agency for Toxic Substances and Disease Registry was petitioned to investigate Sikes Oil Service, an oil recycling facility in Georgia that residents alleged caused significant odors.²⁷ Similarly, residents near a Fallon, Nevada oil recycling plant have reported foul odors, headaches, and eye irritation.²⁸ In 2008, more than one hundred citizens called 9-1-1 to complain about strong, offensive odors associated with an oil recycling facility in Klamath Falls, Oregon.²⁹ Residents near Columbus, Ohio are consistently disturbed by odors from a nearby oil recycling facility that they analogize to the smell of rotten eggs and burned rubber.³⁰ In Detroit, Michigan, residents have made countless complaints against a local oil recycling facility that produces foul smells causing gagging and headaches.³¹ Considering the potential that this Project could cause similar odors, an analysis of odor impacts is essential before determining the overall significance of air impacts.

Finally, the air impact analysis fails because there is no cumulative impact analysis. In analyzing the total air impacts of a project, cumulative impacts are reviewed to determine the incremental effects of a project when viewed in connection and combined

²⁶ Canadian Centre for Occupational Health and Safety, Indoor Air Quality, http://www.ccohs.ca/oshanswers/chemicals/iaq_intro.html.

²⁷ Agency for Toxic Substances & Disease Registry, *Public Health Assessment & Health Consultations: Sikes Oil Service* (Mar. 23, 2010), <http://www.atsdr.cdc.gov/hac/pha/pha.asp?docid=1024&pg=1>.

²⁸ Kate Russel, Ohio Citizen Action, *Heartland Petroleum Not the Only Oil Recycler to Have Problems*, <http://ohiocitizen.org/?tag=bango-oil>, attached hereto as Exhibit E.

²⁹ NBC 52, *Strong Smell Floods 9-1-1 With Calls*, http://www.localnewscomesfirst.com/index.php?option=com_content&view=article&id=1890&Itemid=274, attached hereto as Exhibit F.

³⁰ *Ohio AG Seeks Refinery Shutdown for Air Violations*, Associated Press (Oct. 29, 2011), available at <http://www2.nbc4i.com/news/2011/oct/29/ohio-ag-seeks-refinery-shutdown-air-violations-ar-807649/>, attached hereto as Exhibit G.

³¹ University of Michigan, *Environmental Justice Case Study: Delray Neighborhood Lawsuits Against Local Polluters*, <http://www.umich.edu/~snre492/Jones/delray.htm>, attached hereto as Exhibit H.

with the impacts of past projects, other current projects, and probable future projects.³² Looking at just the Project's impact in isolation from the current environment does not present an accurate account of the effects that the Project will have on the surrounding community.

F. An EIR Must Analyze the Project's Potential Noise Impacts

"Calling noise a nuisance is like calling smog an inconvenience. Noise must be considered a hazard to the health of people everywhere." William H. Stewart, former U.S. Surgeon General. The proposed Project would more than double the amount of truck traffic that normally frequents this location. A medium sized truck produces 73-78 decibels of noise and a heavy truck can produce between 80 and 100 decibels of noise.³³ This noise output from heavy trucks can be twenty times greater than the noise output from a personal automobile.³⁴ Noise experts have concluded that intermittent and impulsive noise, such as the noise created by trucks passing, is more disturbing to communities than continuous noise.³⁵ And CEQA case law makes clear that intermittent noise must be analyzed under CEQA and can result in a significant impact, even if the applicable noise standards are otherwise met.³⁶

Despite the high noise levels associated with truck traffic and industrial facilities and the seriousness of potential health risks corresponding to significant noise levels, the Initial Study gives little consideration to the noise impacts of the Project. First, the Initial Study contains no discussion of the environmental baseline related to noise; there is no indication what the current ambient noise levels are in the area where the Project will be located. Second, no noise study was prepared to predict the additional noise that will be created from the daily operation of the oil recycling facility and the frequent traffic of large tanker trucks during the transfer of hazardous waste. Without identification of current ambient noise levels (including the noise levels at the SFD Recreational Area) or a scientifically based prediction of the noise that will be produced by the Project, the Initial Study's conclusion that the Project will have no noise impact is not credible. Further, the Initial Study attempts to explain its determination of "no impact" by stating that the noise from the Project will not be constant, instead it will be temporary and intermittent. As explained previously, however, noise experts have concluded that this type of intermittent noise is more disturbing to communities than constant noise.³⁷ Additionally, noise from industrial operations is known to be significant, creating such

³² Cal. Pub. Res. Code § 21083.

³³ Simon Fraser University, Decibel, <http://www.sfu.ca/sonic-studio/handbook/Decibel.html>; Edmonton Trolley Coalition, Noise Pollution, <http://www.trolleycoalition.org/noise.html>, attached hereto as Exhibit I.

³⁴ Edmonton Trolley Coalition, *Noise Pollution*, <http://www.trolleycoalition.org/noise.html>, attached hereto as Exhibit J.

³⁵ San Francisco Department of Public Health, Environmental Health: Noise Enforcement Program, <http://www.sfdph.org/dph/EH/Noise/default.asp>, attached hereto as Exhibit K.

³⁶ *Berkeley Keep Jets over the Bay Com. v. Board of Port Commissioners of the City of Oakland* (2001) 91 Cal.App.4th 1344, 1379, 1382.

³⁷ Edmonton Trolley Coalition, *Noise Pollution*, <http://www.trolleycoalition.org/noise.html>.

substantial disturbances that industrial and residential areas are rarely placed side by side.

As suggested by the former U.S. Surgeon General, noise pollution is more than a mere irritation. “Exposure to noise constitutes a health risk. There is sufficient scientific evidence that noise exposure can induce hearing impairment, hypertension and ischemic heart disease, annoyance, sleep disturbance, and decreased school performance.”³⁸ The United States Environmental Protection Agency (“EPA”) holds a similar view that noise constitutes a “real and present danger to people’s health.”³⁹ Specifically, EPA explains that noise significantly affects people throughout each phase of their lives; studies have demonstrated that exposure to high noise levels leads to lower birth weights, learning difficulties and higher blood pressure in children, and sleep problems for elderly citizens.⁴⁰

An EIR must be prepared that analyzes the Project’s potentially significant noise impacts.

G. An EIR Must Analyze the Project’s Potential Impacts Related to Hazardous Effects

Used oil is a hazardous waste, and impacts related to its use, storage, and treatment—including potential accidents—must be analyzed in an EIR. In addition, the Project would generate additional hazardous waste—and its potential impacts must also be analyzed.

The Initial Study states that “[t]ruck traffic does not go through natural habitat, and primarily uses Interstate 605, approximately 0.5 miles north of the Facility.”⁴¹ However, no justification for this assumption is provided, and the exact route trucks will take to and from the facility is nowhere stated in the Initial Study.

First, the statement in the Initial Study is plainly incorrect. Interstate 605 is far to the west of the facility, not 0.5 miles north as stated. Interstate 210 is to the north. Regardless of which interstate is utilized, 210 or 605, as demonstrated in Figure 2, both of these interstates run alongside or through the SFD Recreational Area, meaning that truck traffic will indeed go through natural habitat. Additionally, the routes trucks will take after exiting either Interstate 605 or 210 are not specified. If Interstate 605 is to be the primary route for trucks headed to the facility as stated, those trucks will necessarily drive through the SFD Recreational Area after exiting Interstate 605.⁴² There are also

³⁸ Willy Passchier-Vermeer & Wim F. Passchier, *Noise Exposure and Public Health*, 108 *Environment Health Perspectives* 123, 123 (Mar. 2000), attached hereto as Exhibit L.

³⁹ Environmental Protection Agency, *Noise: A Health Problem 2* (1978), available at <http://nepis.epa.gov/>, attached hereto as Exhibit M.

⁴⁰ Environmental Protection Agency, *Noise: A Health Problem 3-23* (1978), available at <http://nepis.epa.gov/>.

⁴¹ CEQA Initial Study for CleanTech Hazardous Waste Facility at 13.

⁴² See Figure 2.

roads that run from Interstate 210 to the facility that pass through, or near, the SFD Recreational Area.

Trucks passing through or near this sensitive habitat present many potential problems. As stated in the Irwindale General Plan:

The transportation of chemicals and other hazardous substances through the City also presents public safety problems. Two major freeways, numerous railway lines and the urban arterials that traverse the City carry traffic that is involved in the transport of hazardous materials. These transportation routes carry a variety of materials that could pose health risks to Irwindale's residents in the event of an accident. The possibility of such an occurrence may be relatively higher in Irwindale than other communities given the extent of freeway and railroad traffic that passes through the City and the concentration of manufacturing uses in the area.⁴³

The City itself has recognized that transport of hazardous waste is a potentially significant impact, but the Initial Study fails to recognize what the City's General Plan has concluded. Indeed, these health risks posed by a potential accident are very real. California's Office of Spill Prevention and Response's list of "major oil spills" in the state includes a spill that involved a tanker truck that overturned on State Route 182 near Bridgeport and spilled approximately 3,600 gallons of oil into the East Walker River.⁴⁴ The oil spill impacted approximately *10 miles* of stream habitat, impacting wildlife and beneficial uses. Were a truck carrying hazardous waste to or from the Project to be involved in an accident on its way through the SFD Recreational Area, there is great potential to impact this sensitive, natural habitat, similar to how the spill in the East Walker River impacted that habitat.

Not only would a spill emanating from a truck on its way to/from the proposed Project impact the sensitive, natural habitat of protected and rare species, it would also affect water quality and sensitive receptors. As demonstrated in Figure 2, the San Gabriel River is very near the proposed Project location, and trucks approaching the site will either cross the river, or pass next to it. A spill into the San Gabriel River would have very detrimental effects on the water quality of the river, both in the vicinity of the spill, and downstream of the spill. Additionally, because the facility lies on the alluvial fan of the San Gabriel River, and alluvial fans are characterized by porous sands and gravels, there is a strong possibility that a spill could quickly impact groundwater resources. These impacts would be significant, and they have not yet been analyzed.

Treatment of used oil to create recycled oil will necessarily generate hazardous waste. CleanTech's permit application states that "[h]azardous wastes may be generated on-

⁴³ City of Irwindale General Plan Update at 134.

⁴⁴ California Department of Fish & Game, Office of Spill Prevention & Response, *Major Oil Spills and Incidents Involving OSPR 3*, attached hereto as Exhibit N.

site as a result of laboratory operations, maintenance and cleaning operations, and vehicle maintenance.”⁴⁵ These wastes will be “containerized, placed into the drum storage area, and evaluated for final disposition,” which will include transferring to an off-site facility.⁴⁶

Although these hazardous wastes are acknowledged by the permit application, the impacts of these hazardous wastes were not acknowledged or analyzed as part of the Initial Study. The Part B Application readily states that the characteristics of these hazardous wastes and the proper treatment of them will be unknown, requiring that they be tested either on-site or off-site.⁴⁷ Because the characteristics of these wastes are unknown, the analysis of used oil treatment onsite cannot have considered the impacts of these other hazardous wastes. These must be identified and analyzed.

Furthermore, because these hazardous wastes will need to be disposed of off site, and potentially tested off site as well, there will necessarily be additional traffic attributable to the generation of hazardous waste. This additional traffic has not been accounted for or analyzed in the Initial Study. This additional traffic will cause impacts including increased GHG emissions, the potential for more accidents and spills affecting sensitive habitat, sensitive receptors, and water quality, and the potential that unknown hazardous wastes will be transported through Irwindale and surrounding areas. Likewise, these impacts from additional traffic attributable to the hazardous wastes created at the Project must be considered and analyzed.

An EIR must be prepared that analyzes and mitigates all of these potential impacts related to hazardous effects.

H. An EIR Must Analyze Other Reasonably Foreseeable Impacts

CEQA requires that the effects or impacts of a project be analyzed, and this includes all effects, including indirect or secondary effects, caused by a project that are “reasonably foreseeable.”⁴⁸ These reasonably foreseeable effects may be later in time or far removed in distance from the Project.⁴⁹ Here, there are many “reasonably foreseeable effects” that have not been considered and analyzed as required by CEQA.

The Initial Study identifies that wastewater from the proposed facility “may be discharged to a sanitary sewer system under a permit issued by the Los Angeles County Sanitation District.”⁵⁰ While this discharge is identified, the reasonably foreseeable effects related to it are nowhere analyzed. These effects may include spills or leaks associated with the system leading to/from the facility to the sanitary sewer and

⁴⁵ Part B Application at 23.

⁴⁶ *Id.* at 24.

⁴⁷ *Id.*

⁴⁸ Cal. Code Regs. tit. 14, § 15358(a)(2).

⁴⁹ *Id.*

⁵⁰ CEQA Initial Study for CleanTech Hazardous Waste Facility at 13.

impacts of the discharged wastes on the sanitary sewer treatment system itself, especially if that waste contains oil or any other hazardous substance.

Expansion of operations is also foreseeable in the future, but not analyzed as part of the Initial Study. Future expansion of the Project must be analyzed if it is a “reasonably foreseeable consequence of the initial Project.”⁵¹ At the very least, the addition of extra storage tanks at the site is foreseeable and should be analyzed.

Accidents are reasonably foreseeable, even if they are inadvertent, and this is acknowledged in the Initial Study. The Initial Study identifies two likely accidents—spills and fires. However, the Initial Study limits its analysis of these two accidents to only on-site concerns. For instance, the Initial Study discusses spills from a tanker truck or container, but then discusses only how the facility itself is equipped to handle those spills. A spill outside the confines of the facility is clearly foreseeable, as trucks will routinely haul used oil to the facility and hazardous waste and recycled oil from the facility. The impacts of spills outside the confines of the facility must be analyzed. Additionally, the impacts of other similar potential releases of hazardous waste to the environment, like from explosions or deliberate employee actions, must also be analyzed because they are reasonably foreseeable.

Additionally, the Project appears to be designed to convert used oil into unprocessed fuel oil as its end product. The burning of used oil as fuel is dirty and has its own environmental impacts. The indirect environmental impacts of creating additional unprocessed fuel oil is a reasonably foreseeable consequence of the Project that must be analyzed in an EIR.

Moreover, the Initial Study contains no analysis of the Project’s cumulative impacts. It does not even identify other hazardous waste facilities and users in the area, let alone analyze their impacts together with the Project’s.

Response #I-1-11:

DTSC prepared an Initial Study. The analyses of resource impacts were deemed to be less than significant or to have no impact. Subsequently, DTSC prepared a Negative Declaration for the project after determining that the project would not have any significant impacts on the environment.

Also see Response to Comments #I-1-1, #II-1-3, #II-1-18, #II-1-19, and #II-1-20.

Comment #I-1-12:

LAND USE AND ZONING IMPACTS ARE NOT ADEQUATELY ANALYZED

The Land Use and Planning section of the Initial Study makes broad conclusions based on generalities and does not consider the General Plan and zoning designations for the Project site. No site plans, elevations or description of uses is provided in the Initial

⁵¹ *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.*, 47 Cal.3d 376, 396 (1988).

Study text, making it impossible to evaluate the Project fully against the General Plan and zoning code of the City. As discussed below, the Project may have multiple significant impacts related to compatibility with land use policies in the General Plan and zoning code; all of these potential impacts must be analyzed in an EIR.

A. General Plan

- The Project site is designated in the City General Plan as “Industrial / Business Park.” The General Plan states that “[t]he Industrial designation corresponds to the CM (Commercial Manufacturing), M-1 (Light Manufacturing), and the M-2 (Heavy Manufacturing) zones. The maximum FAR for this category is 1.0 to 1.0.” The Initial Study provides no information as to whether the Project is in compliance with the maximum FAR allowed by the General Plan designation. Therefore, the determination as to whether the Project would conflict with any applicable land use plan, policy, or regulation cannot be made. If the Project were to exceed the maximum FAR and require a variance, the Project may have a potentially significant land use impact. The Initial Study fails to complete the analysis necessary to make these determinations and therefore cannot make a finding of “no impact.”
- The City General Plan at page 134 states that, “Many of the City’s industries produce, use, and store hazardous materials. Public safety issues involve not only the use of these materials in populated areas but also the transport and disposal of the substances...The transportation of chemicals and other hazardous substances through the City also presents public safety problems. Two major freeways, numerous railway lines and the urban arterials that traverse the City carry traffic that is involved in the transport of hazardous materials. These transportation routes carry a variety of materials that could pose health risks to Irwindale’s residents in the event of an accident. The possibility of such an occurrence may be relatively higher in Irwindale than other communities given the extent of freeway and railroad traffic that passes through the City and the concentration of manufacturing uses in the area. Exhibit 6-4 identifies those registered hazardous waste generators and handlers in the City. Because these businesses use hazardous materials, they are required to obtain necessary permits from various public agencies.” Although several businesses in the vicinity of the Project appear to be designated as regulated sites for hazardous waste on General Plan figure 6-4, the Project site itself does not appear to be designated. As proposed, the Project is inconsistent with the General Plan. Therefore a General Plan Amendment may be required.
- As noted in the section above, the risk of accident and release of toxic substances are greater in the City of Irwindale than other cities due to the density of industrial uses and the transportation of chemicals and hazardous wastes through the City. The Project will create new and expanded hazardous waste uses in the City and will increase the transportation of hazardous materials within the City. Therefore, an EIR must analyze existing hazardous waste transportation through the City, and whether adding new transportation of

hazardous wastes will cause additional impacts. Section 8a of the Initial Study fails to make this comprehensive analysis, and therefore it is impossible to determine if the Project will comply with the concerns stated in the land use section of the General Plan. In addition a cumulative analysis must be undertaken.

- The General Plan provides dozens of goals and issues that need to be analyzed and addressed to determine if the Project complies with those goals. There is no matrix of how the Project is in compliance with the goals of the General Plan, and the Initial Study's statement that there would be no impact from conflicts with the applicable land use plan is not based on actual analysis.
- The General Plan at page 151 states that, "The Fire Department shall also work with local law enforcement officials in regulating the transport of hazardous materials through the City." To comply with this requirement, CleanTech should prepare a hazardous materials transportation plan. No hazardous materials transportation plan has been submitted to be analyzed as part of the Initial Study, and it does not appear that the Fire Department of the City was contacted for an analysis of that hazardous materials transportation plan. Before the lead agency can determine whether the Project will conflict with applicable land use plans and policies, a hazardous materials transportation plan must be created and evaluated in an EIR.

B. Zoning

- The Project is inconsistent with the zoning code. The Project is located in the M-2 Heavy Manufacturing Zone, which specifically lists uses that are allowed, either with or without a CUP. Uses that the zoning code does not specifically allow are prohibited. Nowhere does the zoning code list hazardous waste processing as an allowed use.⁵² Therefore, hazardous waste processing is prohibited, and may not be approved unless and until the zoning code is amended.
- Moreover, the Initial Study acknowledges that the Project would allow CleanTech to operate a "used oil recycling facility." The zoning code specifically regulates "processing facilities" that process recyclable material—precisely the type of facility the Project will be.⁵³ But the zoning code specifically states the processing facilities, like the Project, may not accept hazardous materials: "No hazardous materials, including but not limited to, automotive fluids shall be permitted on site."⁵⁴ In other words, the zoning code specifically prohibits the Project. The Project cannot be approved, and should not even be considered, unless and until the City of Irwindale amends its zoning code to allow hazardous waste processing.

⁵² City of Irwindale Municipal Code, §§ 17.56.010, 17.56.020.

⁵³ City of Irwindale Municipal Code, § 17.56.080.

⁵⁴ City of Irwindale Municipal Code, § 17.56.090(B)(12).

- Even if the Project were allowed under the current zoning code (it is not), the Project would require a CUP under zoning code section 17.56.020. A CUP is required for uses the zoning code allows that involve “considerations of smoke, fumes, dust, vibration, noise, traffic congestion, or hazard.” The Initial Study fails to recognize the need for a zoning code amendment and for a CUP—both discretionary approvals by the City. The Initial Study assumes compliance with all codes and finds no impact. The Initial Study provides no evaluation of the impacts of amending the zoning code and makes no finding as to whether a CUP could be granted for the facility if the zoning code is amended. An EIR must be prepared that acknowledges and mitigates the impacts the zoning code presumes for the Project. This underscores why DTSC should not be the lead agency.
- In fact, even if the zoning code were amended to allow the hazardous waste processing, a CUP could not be granted for the Project because the Initial Study makes no attempt to provide the information to support the findings required to issue a CUP. Zoning code section 17.80 requires that certain specific findings be made prior to the approval of the CUP. Municipal Code section 17.80.040 states that the applicant shall have the burden of proof to with respect to required findings. The Initial Study fails to address any of these findings, which must be examined to make the determination whether the Project will “conflict with any applicable land use plan, policy...(Including by not limited to the general plan, specific plan, local coastal program or zoning ordinance.)” (Emphasis added.)

The Initial Study addresses none of the required findings in Municipal Code section 17.80.040 and therefore cannot make the determination that the Project will not conflict with local land use policies.

Specifically there is no evidence in the Initial Study that the Project has the access to streets that are able to carry the quantity of traffic generated by the proposed facility. The Initial Study states that, “the level of service for North Irwindale Avenue between First Street and Gladstone Street is identified as Level D. Level D borders on a range in which small increases in flow may cause substantial increases in delay and decreases in travel time.”⁵⁵ The Initial Study then tries to turn the above statement on its head by stating that the “increase in vehicle truck traffic is not expected to significantly increase the daily traffic flow, because there will be only a small increase in the number of vehicles.” As noted above, the Initial Study finds that on Level of Service Level D roadways, a “small increase in flow may cause substantial increases in delay,” which would cause a significant impact under CEQA, and calls into question the ability for the City to make the required finding. Because “small increases” in traffic can cause significant delays, the traffic from the trucks, employees, vendors, and others may result in a significant impact on the roadway level of service. A traffic study

⁵⁵ City of Irwindale General Plan Update at 37 (emphasis added).

must be completed, and adequate mitigation imposed, before the any determination of 'no impact' can be made.

- The Project will transport hazardous materials through the community and the region. The General Plan is very clear that “[t]he transportation of chemicals and other hazardous substances through the City also presents public safety problems. Two major freeways, numerous railway lines and the urban arterials that traverse the City carry traffic that is involved in the transport of hazardous materials. These transportation routes carry a variety of materials that could pose health risks to Irwindale’s residents in the event of an accident.”⁵⁶ Due to the risks posed by the transportation of the chemicals, it is incumbent upon the Project to present a transportation plan that provides a risk analysis for adjacent land uses on the transportation route. The negative declaration and Initial Study fail to address the impact of any routing of hazardous materials. Moreover, there is no cumulative analysis of the added impact of the Project with existing and reasonable foreseeable projects that transport hazardous waste in the City. These analyses must be presented in an EIR prior determining that the Project will not “conflict with any applicable land use plan.”
- The zoning code provides various development standards for projects built in the M-2 zone. These requirements specify set-backs, parking, height and other development criteria that have not been evaluated because no site plan has been provided to the public.

Response #I-1-12:

See Response to Comments #I-1-6, #I-1-8 and #II-1-3.

Comment #I-1-13:

C. Green House Gases

- The Initial Study cannot make a finding that there will be no increase in greenhouse gas emissions. The Initial Study is completely devoid of any analysis of the Project’s indirect greenhouse gas emissions. Most notably, the Project appears to be designed to convert used oil into unprocessed fuel oil as its end product. The burning of used oil as fuel will have very significant greenhouse gas emissions, but the Initial Study completely ignores them. An EIR for the Project needs to be prepared that quantifies and mitigates the Project’s direct and indirect greenhouse gas emissions.

⁵⁶ City of Irwindale General Plan Update at 134.

Response #I-1-13:

The project involves receiving, storing, treating, and certifying the used oil as recycled oil. Treatment of used oil is done by the gravity separation and the addition of chemical to the used oil to remove metals. No heat is involved. After the used oil is certified as recycled oil, the final deposition is unknown. The recycled oil will be sent offsite and maybe further re-refined into motor oil or it may be utilized as fuel. If the used oil is utilized as a fuel, there may be an increase in greenhouse gases on a global scale. However, in [Save the Plastic Bag Coalition v. City of Manhattan Beach](#) (July 14, 2011, S180720) __Cal.4th__, the California Supreme Court (“Court”) found that when considering the “actual scale of the environmental impacts that might follow from increased paper bag use in Manhattan Beach, instead of comparing the global impacts of paper and plastic bags, it is plain the city acted within its discretion when it determined that its ban on plastic bags would have no significant effect on the environment.” In other words, evidence of global impacts of the use of paper bags did not necessarily translate into evidence of local impacts of paper bag use. The Court found that the impacts of this project outside of Manhattan Beach are indirect and difficult to predict and the city could therefore evaluate the broader environmental impacts of the ordinance. Finally, the Court noted that common sense was an important consideration at all levels of CEQA review. The final destination of the recycled oil is outside the control of DTSC. Assuming that the recycled oil will be burned as fuel is speculative. Therefore, any impacts of this project outside of Irwindale are indirect and are difficult to predict. DTSC believes the preparation of a negative declaration for this project was appropriate because the analysis in the Initial Study concluded the project will not have any significant impact on the environment.

Comment #I-1-14:

IMPROPER LEAD AGENCY

DTSC has improperly been designated as the Lead Agency in the Initial Study. CEQA Guideline 15051 is clear and unequivocal in the “criteria for identifying the Lead Agency”:

- (1) The 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 such as an air pollution control district or a district which will provide a public service or public utility to the project.

The Project will need to obtain a General Plan Amendment, zoning code amendment, and a CUP from the City of Irwindale. All of these are discretionary actions and therefore subject to CEQA. These discretionary approvals would be the exercise of general governmental powers as discussed in CEQA guideline 15051, and therefore the City of Irwindale should be designated as the Lead Agency.

The failure to provide analysis of the significant land use issues related to the City land use approvals required for the Project, the adjacency of sensitive environmental resources, and community resources shows that DTSC's limited regulatory role makes its designation as Lead Agency nonsensical. DTSC is only focused on a narrow set of issues surrounding the permit that it issues. A City must balance the needs of the City's population and indeed the entire region in making certain land use decisions. Thus, the City of Irwindale should be the lead agency to prepare an EIR for the Project.

Response #I-1-14:

See Response to Comments #I-1-6, #I-1-8, #II-1-3, and #II-1-4.

Comment #I-1-15:

WATER IMPACTS AND ISSUES ARE NOT ADEQUATELY ANALYZED

Due to the location of the Project, there are many potential impacts to water resources and issues related to water that must be analyzed in an EIR. These include issues regarding nearby and adjacent impaired waterbodies, potential impacts to the high quality aquifer below the site, and the very real possibility of a flood impacting the facility.

A. Improper Assumptions in Initial Study

The water impacts analysis is unsound because it assumes that there will never be any release of contaminants from the site. This assumption is unrealistic. Although the Project may well utilize containment methods, a spill or leak is entirely foreseeable. In fact, DTSC directly acknowledged the possibility of a spill or leak in its demand that CleanTech meet financial assurance requirements for liability.⁵⁷ DTSC required financial assurances to insure that CleanTech has the necessary funds to remediate any potential hazardous waste contamination caused by the Project.

Because the analysis improperly assumes that an escape of contaminants could not occur, the Initial Study is void of any analysis of potential groundwater impacts associated with the Project. The Initial Study does not identify the existing environmental setting and baseline conditions of the groundwater underlying the site. As a result, it is unclear whether the portion of the San Gabriel Canyon Basin aquifer that underlies the site is the portion of the San Gabriel Canyon Basin aquifer that already suffers from serious contamination plumes that underlie 50% of the city.⁵⁸ Further, the Initial Study does not analyze whether the environmental impacts of a potential spill or leak would be significant. Given that the site is on the alluvial fan of the San Gabriel River, which consists of sand and gravel, any release of hazardous

⁵⁷ California Environmental Protection Agency & Department of Toxic Substances Control Act, *Draft Hazardous Waste Facility Permit: CleanTech Environmental, Inc.* 25. EPA ID Number: Cal 000330453.

⁵⁸ City of Irwindale General Plan Update 113 (2008), available at <http://irwindale.ca.us/pdf/planning/general-plan-june-2008.pdf>.

substances from the Project would easily seep into groundwater resources.⁵⁹ These potential impacts must be analyzed in an EIR.

Response #I-1-15:

DTSC acknowledges that a spill or leak may be possible, but does not believe it is probable. The facility has many design and operational features and procedures to ensure that any spills or leaks will be contained and not impact the groundwater. The safeguards at the facility ensures that the probability of any waste impacting the groundwater or surface waters, should there be a spill or leak to be extremely remote.

Financial assurance requirement for liability is not limited to CleanTech. All hazardous waste facilities are required to maintain certain levels of liability insurance. In fact, Government mandates many businesses obtain liability insurance to protect against risk and reimburse any injured parties in cases of accidents. The act of requiring liability insurances does not presuppose a spill or leak.

Also see Response to Comments #I-1-9.

Comment #I-1-16:

B. Impaired Waterbodies

Many of the waterbodies near, and adjacent to, the facility are on California's impaired waterbody list required by section 303(d) of the Clean Water Act. When a waterbody is deemed to be "impaired" and included on the "303(d) list," a "total maximum daily load" ("TMDL") must be set for that waterbody that limits discharges to the maximum amount of pollutants that can be discharged to the waterbody while still attaining water quality standards.⁶⁰

As discussed above, the Project is adjacent to the SFD Recreational Area. Santa Fe Dam Park Lake ("SFD Lake") in the SFD Recreational Area is impaired and on California's 303(d) list of impaired waterbodies for which TMDLs must be set. Specifically, SFD Lake is impaired with high levels of copper and lead, and with unnatural pH levels.⁶¹ Because SFD Lake is impaired and on the 303(d) list, TMDLs must be set for the lake, and according to the State Water Board's website, TMDLs for SFD Lake for these pollutants are expected to be set by 2019.⁶²

Like the SFD Lake, the nearby San Gabriel River is also on California's 303(d) list of impaired waterbodies. Reach 3 of the San Gabriel River, which is defined as the stretch

⁵⁹ CEQA Initial Study for CleanTech Hazardous Waste Facility at 18.

⁶⁰ 33 U.S.C. § 1313.

⁶¹ See Los Angeles Regional Water Quality Control Board, *Final California 2010 Integrated Report (303(d) List): Santa Fe Dam Park Lake*, attached hereto as Exhibit O.

⁶² *Id.*

of the river from Whittier Narrows to Ramona, and is the stretch of the San Gabriel River near the Project, is impaired with high levels of bacteria.⁶³ The TMDL for this pollutant in the San Gabriel River is expected to be set by 2021. Although the levels are not such that a TMDL is required, samples of Reach 3 of the San Gabriel River were also found to exceed lead, toxicity, and ammonia standards.⁶⁴

Until TMDLs are set to regulate discharges into these waterbodies and ensure that water quality standards are met, these waters will remain impaired, meaning that any discharge that leaves the Project and drains into these waterbodies will only add to these existing problems. An EIR must analyze the Project's potential impacts on these already impaired nearby water bodies.

Response #I-1-16:

As discussed in the section 9 of the Initial Study, the project does not involve any discharge to any waterbodies. Additionally, no discharge to the local sanitary sewer is currently planned. Therefore, the Initial Study concluded there will be no impact to surface waters.

Also see Response to Comments #I-1-5.

Comment #I-1-17:

C. Aquifer Concerns

Irwindale overlays the main San Gabriel Groundwater Basin.⁶⁵ The portion of the groundwater basin under Irwindale "consists of fresh-water bearing materials containing coarse sand and gravel, making them ideal aquifers."⁶⁶ The aquifer beneath the City is at least several hundred feet thick and has rapid flow characteristics, as would be expected for an aquifer located where there are abundant alluvial fan deposits.

Previously, the Watermaster in charge of this groundwater basin indicated that there is concern about the possibility of future groundwater contamination resulting from activities in Irwindale. This concern was no doubt due to the shallow groundwater and high porosity and high permeability of the aquifer. Placing a used oil facility on top of such an aquifer, with high porosity and high permeability, has the potential to create a public health crisis were a spill to occur.

⁶³ See Los Angeles Regional Water Quality Control Board, *Final California 2010 Integrated Report (303(d) List): San Gabriel River Reach 3*, attached hereto as Exhibit P.

⁶⁴ *Id.*

⁶⁵ City of Irwindale General Plan Update at 112.

⁶⁶ *Id.*

Response #I-1-17:

See Response to Comments #I-1-9.

Comment #I-1-18:

D. Potential For Flooding

The Initial Study acknowledges that the Federal Emergency Management Agency (“FEMA”) has classified the area around Santa Fe Dam as an “area of undetermined, but possible flood hazard.” Yet it does nothing to analyze or mitigate the risk that flooding at a hazardous waste facility may cause significant environmental impacts. The Initial Study even acknowledges that the Project “may be subject to local flood hazard,” but it does nothing to analyze and assess the risk of hazardous waste contaminating flood waters. At a minimum, the potential environmental impacts from flooding at the Project site must be thoroughly analyzed and mitigated in an EIR.

Response #I-1-18:

See Response to Comments #I-1-10.

Comment #I-1-19:

CONCLUSION

Even with the scant information provided in the Initial Study, it is evident that the Project may have significant environmental impacts. A full, adequate EIR must be prepared before the Project can be considered. Given the nature of the Project and the sensitivity of nearby uses, an EIR must be prepared by the City of Irwindale and appropriate mitigation measures adopted.

Response #I-1-19:

As noted in Response to Comments #I-1-8, DTSC is the proper lead agency for this project and determined that a Negative Declaration is appropriate for this project.

See Response to Comments #I-1-1 and #I-1-8.

Commenter #2: Laura Francis

Comment #I-2-1:

I understand that the State is considering approving a hazardous waste treatment plant in Irwindale literally next door to the Santa Fe Dam Recreation area. That makes no sense. The environmental document doesn't address the possible environmental harm to the Recreation area.

Response #I-2-1:

See Response to Comments #I-1-1.

Comment #I-2-2:

I also find it odd that this was issued over the Thanksgiving and Christmas holidays, when people are spending time with their families and aren't watching closely. You need to start over, and let the public know what is really being done here. This notice needs to be sent to all the Recreation area users and to the various groups who support the Recreation area.

Response #I-2-2:

To compensate for the holidays, DTSC extended the normal 45-day comment period to 52 days and waited until after the holidays to hold the public meeting. The public meeting was held on January 5, 2012 at the Irwindale Community Center. Additionally, DTSC granted extension for submitting comments to those who asked for such extension. The public notice was published in The San Gabriel Valley Times and La Opinión. An ad was aired on a local radio station. Factsheets in English and Spanish were sent to the facility mailing list and residents within a quarter-mile radius of the facility. DTSC believes ample time and notification were given to comment on the project.

Comment #I-2-3:

The environmental document does not describe really how close this hazardous waste plant is to this great habitat area. Thousands of people use this also. You can't put hazardous waste next to a Recreation area and say there are no impacts. What if a truck carrying hazardous waste crashes? The "Negative Declaration" doesn't even talk about that. Can you imagine what that would do to the birds and fish and other species, the people, the water, and the air!!! Have the scientists study that, and they will tell you there would be a "significant" impact. What if there is a leak into the ground and it spreads into the lake and ground water. Where is the study of that? Even if there aren't any crashes, there will be problems. The traffic, noise, and air quality in that area are a

mess already. There is no traffic study. It's going to create impacts, but you didn't study it!!! I didn't even see the studies that go with the "negative declaration." It was just a checklist with a few sentences hiding the "impacts." There is no study of air impacts or noise impacts. The City is already concerned about more hazardous waste. Are you actually going to study the "impacts" of hazardous waste, or just going to guess, and hope that people don't notice? Here's one citizen demanding that you actually study it!

You need to start over and prepare real "Environmental Impact Report" with measures that help avoid these impacts. Or better yet, find another place to put the "CleanTech" hazardous waste plant. It doesn't belong in Irwindale. It doesn't belong next to the Recreation area and other parks.

Response #I-2-3:

DTSC does not have jurisdiction over the siting of hazardous wastes management facilities. Siting of hazardous wastes management facilities is usually within the jurisdiction of the local planning agency. Once a facility has been sited and an application for a permit submitted to DTSC, DTSC is obligated to review the application to ensure that the proposed project would be operated in a manner that is safe and protective of human health and the environment and to make a determination on the application. DTSC has reviewed this proposed project for compliance with statutes, regulations, and technical guidance. Based upon our review, we conclude that this project would be protective of human health and the environment.

Also see Response to Comments #I-1-1.

Commenter #3: Teresa T. Young

Comment #I-3-1:

CleanTech Environmental Inc. should NOT be given a permit to clean, store, transport any hazardous material in, around or from their facility above the Santa Fe Dam, or in any area that has the potential for contaminating the San Gabriel Valley's Aquifer. The water from the aquifer is mixed by the Metropolitan Water District with water from the Colorado River and Sacramento Delta and distributed throughout Los Angeles County. The San Gabriel Valley Aquifer has been contaminated with industrial hazardous wastes from other industries and is now, being treated by the USEPA. Further contamination will also mean less water will be available for the 2+ million people who live in the San Gabriel Valley and will cost much more.

This or related enterprises should never be considered in the alluvial plane of the San Gabriel Valley Aquifer!

Response #I-3-1:

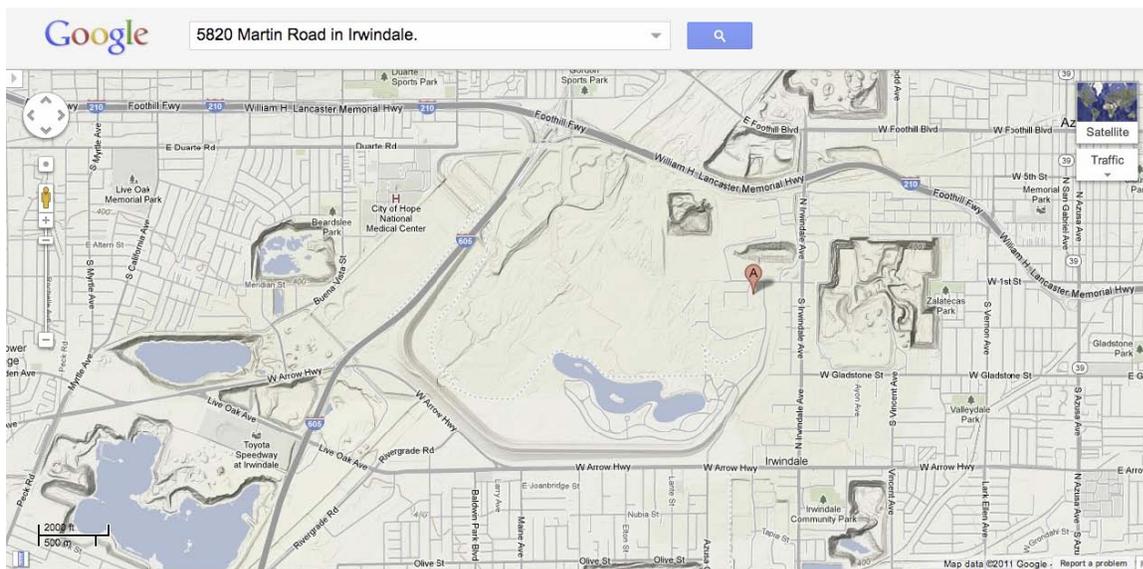
See Response to Comments #I-1-2 and #I-1-9.

Comment #I-3-2:

Permit request:

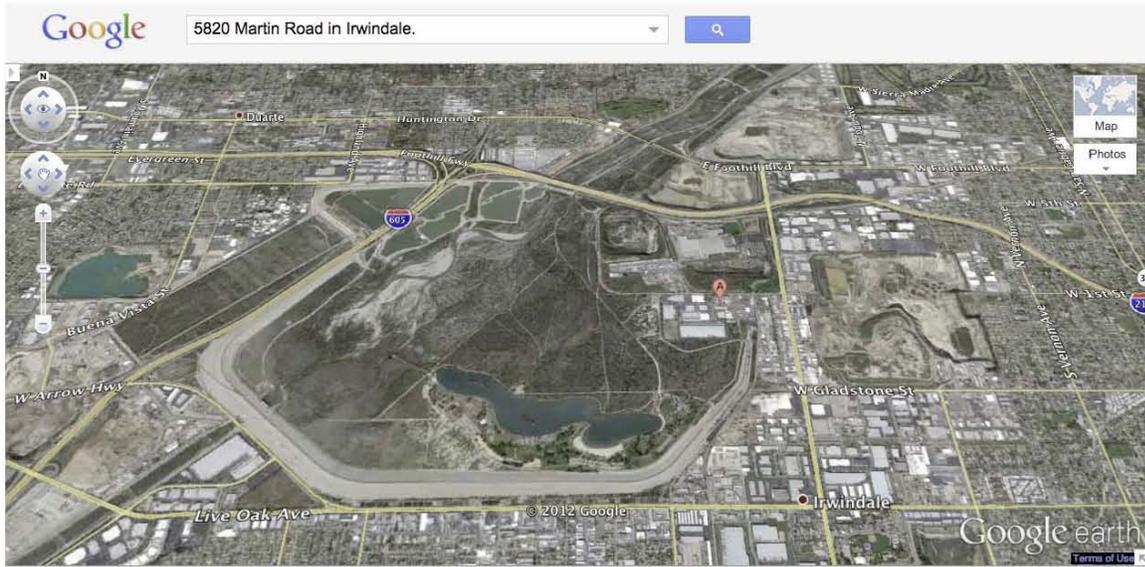
CleanTech Environmental Inc. has submitted a request for a permit for their facility at 5820 Martin Road in Irwindale. CleanTech Env. Inc (aka AgriTech International Limited,UK) wishes to collect used oil from offsite “generators” and consolidate (store) the used oil in tanks at the facility within the Santa Fe Dam. CleanTech will remove metals from the used oil and then store and enhance (dehydrate) the used oil for reuse. It will also collect waste antifreeze (poisonous to all life), oily rags, cat litter from other spills, and non-RCRA (this means; does not ignite, or is corrosive, reactive or toxic and is not a listed hazardous waste) and store them on their facility in Irwindale above the Santa Fe Dam and the Aquifer’s spreading grounds. Then the drums will be shipped offsite in trucks.

CleanTech Env. Inc. LLC. wishes to conduct business of their hazardous waste facility on soils that are the alluvial sands of the San Gabriel River above the Santa Fe Dam and near the spreading grounds for the San Gabriel Valley Aquifer, which supplies drinking water to several million people within the San Gabriel Valley. Waters in the aquifer flow downhill, or south west to the Pacific Ocean. The CleanTech Env. Inc. facility will be located within the alluvial fan of the San Gabriel River (Google Topography, the red flag is the CleanTech Env. Proposed facility) such that that oil mixes from CleanTech and the San Gabriel Aquifer, located together at the top north east section of the San Gabriel River Aquifer, will potentially mix and flow into the subsurface water body.



The spreading grounds are around the Google marker for the 605 Freeway.

The red flag is the CleanTech Env. Inc. facility. It is below the 210 freeway, just east and south of the San Gabriel Aquifer Spreading grounds. The Santa Fe Dam is an Army Corps of Engineers' facility on the San Gabriel River built to protect the down river communities from floods.



The following illustrations are from the U. S. G. S. maps and Aquifer documents.
http://pubs.usgs.gov/ha/ha730/ch_b/B-text4.html

Figure 123. The Los Angeles–Orange County coastal plain aquifer system is located in southern California, and occupies most of coastal Los Angeles and Orange Counties.

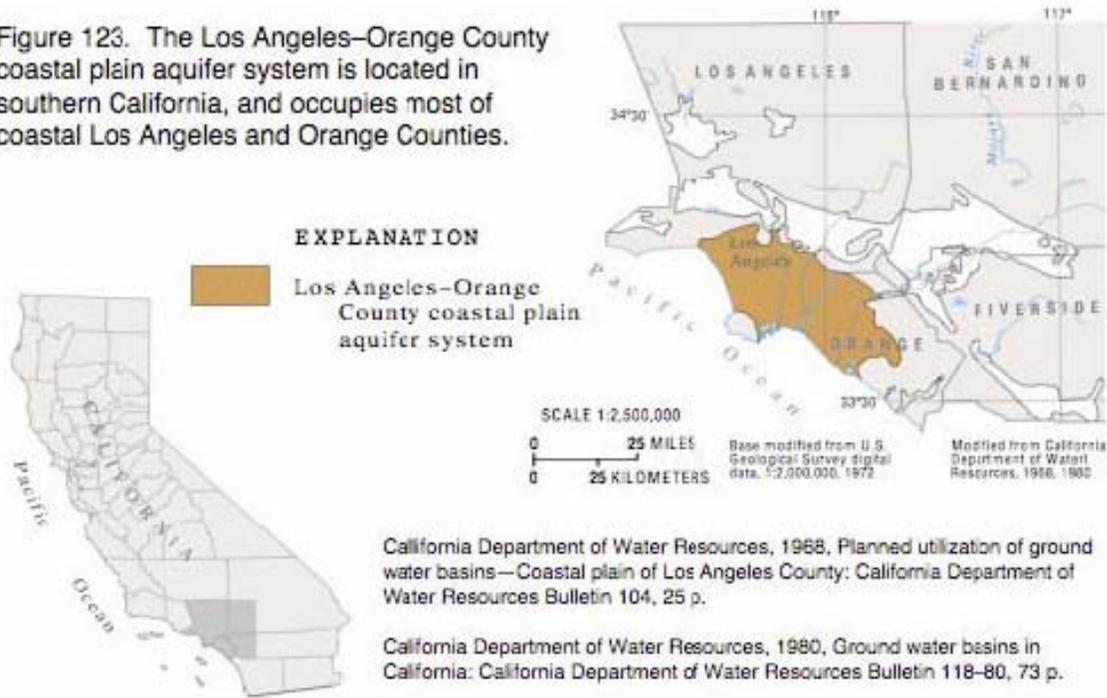
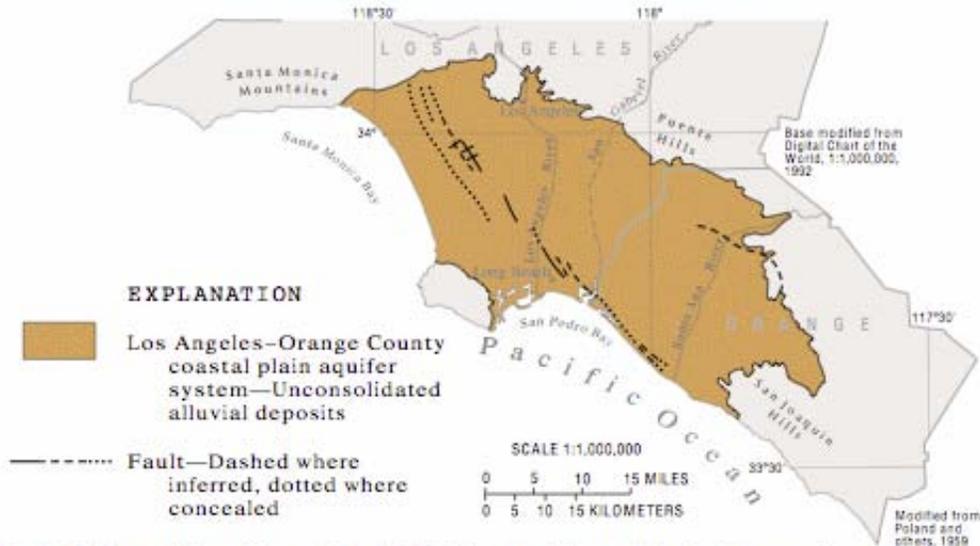


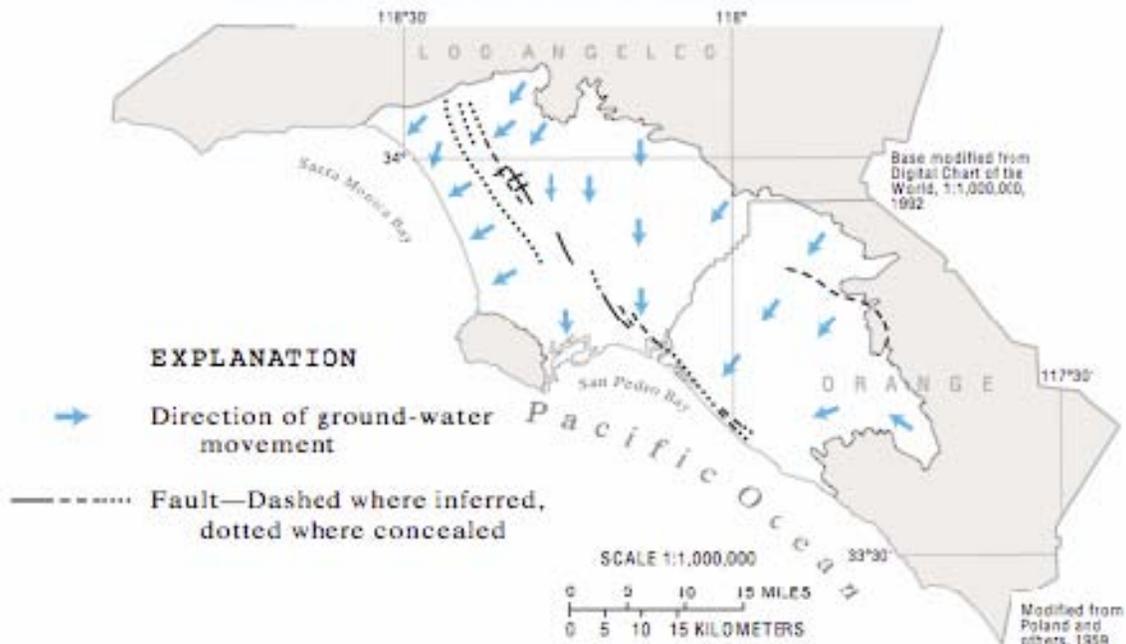
Figure 125. The Los Angeles–Orange County coastal plain basin is bounded on the west by the Pacific Ocean and on all other sides by mountains. The Newport–Inglewood Uplift, which is a prominent structural feature, extends nearly the length of the basin.



Poland, J.F., Garrett, A.A., and Sinnott, Albert, 1959, Geology, hydrology, and chemical character of ground waters in the Torrance–Santa Monica area, California: U.S. Geological Survey Water-Supply Paper 1461, 425 p.

The direction of the flow of water in the aquifers of the Los Angeles and Orange Counties.

Figure 127. Ground water moved toward and discharged into the Pacific Ocean before development of the aquifer system.



Poland, J.F., Garrett, A.A., and Sinnott, Albert, 1959, Geology, hydrology, and chemical character of ground waters in the Torrance–Santa Monica area, California: U.S. Geological Survey Water-Supply Paper 1461, 425 p.

CleanTech Env. Inc. will be located on top of the San Gabriel Valley aquifer and will pose a health threat to millions of people through water by the spills and leaks, which cannot be controlled completely, by the CleanTech Env. Inc. or their contractors. An accident WILL happen, and then, the water will be contaminated - contaminating the drinking water of the 2+ million people of the San Gabriel Valley.

The ground beneath the facility is composed of brown sandy silt and silty sand with little cohesion to at least 50 feet if not more (Z1D Final Rivertech Concept Report DPWRev, Lario Creek Stream Enhancement Project by Rivertech Inc. in association with: Engineering and Hydrosystems, Michael Brandman Associates, and Camp Dresser and McKee Inc.), This sandy material follows the historic flows of the San Gabriel River effluvia through the San Gabriel Valley to the ocean (private conversation with the engineer). This alluvial substraight will absorb the oils, grease, antifreeze, and other hazardous waste and will mix because of the hydrophobic properties of the antifreeze and will sink from the weight to just below the surface. Once, in contact with water (rain, moisture, etc.) this mix will also combine with water because of the hydrophilic properties of the antifreeze. The various metals that the used oil will contain, will also mix with the antifreeze and will become a part of hazardous materials entering the water table.

This project is unacceptable. This company should NOT be granted a permit because it WILL contaminate the drinking water for the 2+ million people of the San Gabriel Valley.

Response #I-3-2:

DTSC is charged by statute and regulations to make permit decisions that are protective of public health and the environment. The facility will be constructed on a 8-inch concrete foundation. All the tanks will be aboveground, elevated, and located indoors. The tanks and the secondary containment system, including the foundation and walls are inspected daily. Any leaks will be detected during the daily inspections. If a leak is found, the tank will be taken out of service, repaired, and re-certified before it can be put back into the operation. The tanks will be required to meet the Underwriters Laboratories (UL) requirements. UL is an independent organization that develops or actively participates in the development of national and international safety standards. UL listed mean that UL has tested representative samples of that product and determined that they meet UL's rigorous requirements.

All Permitted Units are required to have secondary containment systems to prevent any spills or leaks from leaving the facility. The entrances in the loading/unloading areas are equipped with 2" concrete berms to ensure no precipitation flow into the building and no spills or leaks leaves the facility. The floors are designed to slope towards sumps. All sumps are inspected daily and any liquids in the sumps will be pumped into a separate holding tank.

The Facility is required to have a contingency plan and emergency procedures in place to respond to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

DTSC has reviewed this proposed project for compliance with statutes, regulations, and technical guidance. Based upon our review, we conclude that this project would be protective of human health and the environment.

Commenter #4: Anthony C. Zampielo (Representing the Main San Gabriel Basin Watermaster)

The Main San Gabriel Basin Watermaster (Watermaster) has reviewed the "Draft Hazardous Waste Facility Permit and Proposed Negative Declaration", issued November 18, 2011, which was been prepared by the Department of Toxic Substances Control (DTSC) for CleanTech Environmental Inc. (CleanTech) hazardous waste treatment facility. Although the public comment period was to conclude on January 9, 2012, we appreciate DTSC's confirmation that it has extended the comment period to February 3, 2012 (see attached). The proposed CleanTech site is located at 5820 Martin Road in the City of Irwindale. Watermaster understands the CleanTech site will collect used oil from offsite generators (such as gas stations and auto repair shops), waste antifreeze, and non-RCRA wastewater, consolidate the shipments into appropriate storage tanks, and then ship the material to offsite users.

The Watermaster is a Court-appointed agency which manages both the water supply and water quality of the groundwater' underlying the Main San Gabriel Basin. Portions of the Main San Gabriel Basin have been declared a Superfund site since the 1980s with the most contaminated area located within portions of the Cities of Azusa, Baldwin Park and Irwindale. It is our understanding the proposed project will include the transportation and storage of substantial quantities of hazardous waste (used oil, waste antifreeze, oil contaminated solid waste [such as rags], and non-Resource Conservation and Recovery Act (RCRA) wastewater). Consequently, without appropriate mitigative measures, the proposed facility could provide a source of contamination to the Main San Gabriel Basin Groundwater Basin. Following our review of the subject documents, we offer the following comments.

Comment #I-4-1:

1. The entire facility should incorporate sufficient redundant measures to ensure any potential spill/leak will be contained onsite. All facilities should be above ground and inside an enclosed area.

Response #4-1:

There are a number of facility design features to ensure any potential spill and leaks will be contained onsite. The tanks will be UL listed and will be installed on saddles aboveground on an 8-inch concrete foundation. Any leaks will be seen during the daily inspections. The tanks will be surrounded by a secondary containment system which can contain 33,600 gallons which is 42% greater than required by regulations. The floor immediately outside the tank farm will slope to sumps and any contents in the sumps

will be pumped into a separate holding tank. Two inch concrete berms will be constructed in front of loading/unloading entrance to prevent any spills and leaks from leaving the facility.

In order to provide a more detailed description of the facility, the following information was excerpted from the Initial Study:

PROPOSED PERMITTED UNITS AND OPERATIONS

The proposed CleanTech Environmental, Inc. facility will have five (5) permitted units within 2 process areas: Process Area 1 and Process Area 2. Both process areas are located within a warehouse building. The 5 permitted units are:

- 1. Drum Storage Area*
- 2. Multi-compartment Tank*
- 3. Tank Storage and Treatment Area*
- 4. Holding Tank*
- 5. Loading/Unloading Area*

PROCESS AREA 1

Process Area 1 contains 2 Permitted Units identified as Unit #1: Drum Storage Area and Unit #2: Multi-compartment Tank. This area is located inside of the facility on the east side of the facility (See Figure 3).

UNIT #1: DRUM STORAGE AREA: The Drum Storage Area is used to store both liquid waste (used oil, non-RCRA oily wastewater and waste antifreeze) and solid waste contaminated with oil (oily rags, oil contaminated soil, cat litter used to absorb small spills at gas stations, etc.) in drums and other containers compatible with the waste material. Analysis of the solid waste contaminated with oil is conducted before the waste is collected. The Drum Storage Area is also used to storage of solid hazardous waste in a 10 to 15 cubic yard roll-off bin. Hazardous waste of the same waste type may be consolidated in containers in the area.

The Drum Storage Area consists of a 62 feet 5 inches by 55 feet by 5.5 inch thick reinforced concrete pad with a shallow 2.5-inch "drive-over" berm. To the east and west of this area are the warehouse walls. The south side has a 24-inch containment wall and to the north are roll-up doors with the 2.5-inch drive-over berm. There is one 16 feet long by 3 feet wide by 3 feet deep sump (Sump No. 1) with a capacity of 1,077 gallons to catch any spills from transfer or loading/unloading operations. This area also slopes toward the west into a concrete channel which is piped to Sump No. 1. Any liquid in Sump No. 1 is pumped to the Holding Tank (Unit #5). A concrete sealant is applied to the entire exposed interior surface area. Hazardous waste will be stored in 5 to 55 gallons drums, 250 or 330 totes, and 10 to 15 cubic yard roll-off bin. The most common size of the container used to store hazardous waste is 55 gallons.

The total maximum permitted storage capacity of the Drum Storage Area will be 42,240 gallons, inclusive of all drums, totes, and the roll-off bin.

UNIT #2: MULTI-COMPARTMENT TANK: The Multi-compartment Tank consists of one 20,000-gallon hazardous waste storage tank divided into 3 compartments (Tank #1A, Tank #1B, and Tank #1C) and the land on which it is situated. The entire tank measures 34 feet 8 inches long with a 9 feet 10 inch diameter and is constructed of steel. Tanks #1A and #1C are 7,000 gallons and Tank #1B is 6,000 gallons. The Unit is completely enclosed by the warehouse walls on three sides and a 20-inch high and 8-inch thick containment wall on the fourth. There are two 4-inch pipes connecting this secondary containment area with the secondary containment area of the Tank Storage and Treatment Area to provide one common secondary containment system with a capacity of 40,310 gallons. The foundation of this Unit is constructed of a reinforced concrete slab 8 inches thick and measures 55 feet by 16 feet 6 inches.

Used oil and non-RCRA wastewater are brought to the Facility in tanker trucks and unloaded into the appropriate tanks. There is no treatment allowed in any of these tanks. Tank #1A stores used oil. Tanks #1B and #1C store either used oil or non-RCRA wastewater. The total maximum permitted storage capacity of the Multi-compartment Tank is 20,000 gallons. The maximum permitted storage capacity of Tank #1A is 7,000 gallons, Tank #1B is 6,000 gallons, and Tank #1C is 7,000.

PROCESS AREA 2

Process Area 2 contains 3 Permitted Units identified as Unit #3: Tank Storage and Treatment Area, Unit #4: Holding Tank, and Unit #5: Loading/Unloading Area.

UNIT #3: TANK STORAGE AND TREATMENT AREA: The Tank Storage and Treatment Area consists of 8 hazardous waste storage/treatment tanks and the land on which they are situated. Each tank measures 34 feet 8 inches long with a 9 feet 10 inch diameter is constructed of steel. The tanks are enclosed within a 24-inch high, 8-inch thick wall on two sides, a 14-inch wall on the third side, and the warehouse wall on the fourth to provide a combined secondary containment capacity of 40,310 gallons. The foundation of this Unit is constructed of a reinforced concrete slab 8 inches thick and measures 90 feet by 60 feet. There is a 2 feet wide by 2 feet long by 6 inch deep sump near the north wall. Any liquid in the sump is manually pumped to the Holding Tank (Unit #4).

Used oil, waste antifreeze, and non-RCRA wastewater are brought to the Facility in tanker trucks and unloaded into the appropriate. Tanks #2, #3, #6, #7, #8 and #9 are used for the storage of used and/or certified oil. Tank #4 is used for the storage of non-RCRA wastewater and Tank #5 is used for the storage of antifreeze. The used oil may then be treated by blending, gravity separation, precipitation and/or dehydration to meet recycled oil purity standards in Health and Safety Code section 25250.1(a)(3). Used oil meeting the purity standards shall be recorded into the operating record. The tank is

locked down. No additional used oil shall be pumped into the tank. Treated used oil that cannot meet the purity standards is managed as used oil.

Each tank has a maximum capacity of 20,000 gallons. The total maximum permitted storage capacity of the Tank Storage and Treatment Area is 160,000 gallons.

UNIT #4: HOLDING TANK: The Holding Tank consists of one 7,000-gallon poly storage tank and the land on which it is situated on. The tank is 10 feet high and 12 feet in diameter. The tank is totally enclosed by 20-inch containment walls. The secondary containment area of this Unit is connected to the secondary containment area of the Tank Storage and Treatment Area by two 4-inch pipes. The foundation of this Unit is constructed of a reinforced concrete slab 8 inches thick and measures 15 feet by 15 feet.

The Holding Tank is used for the storage of liquid waste from process spills collected from any of the various sumps located in the process areas. The Holding Tank also stores liquids collected from material spills, floor cleaning wastes, rainwater collection, etc.

UNIT #5: LOADING/UNLOADING AREA: The Loading/Unloading Area consists of a 19 feet by 90 feet by 5.5 inch thick reinforced concrete pad with a shallow 2.5-inch "drive-over" berm. To the east of the Unit is the warehouse wall. To the south is the 20 inch containment wall of the Tank Storage and Treatment Area. The west sides has a 2.5-inch "drive-over" berm and to the north are two roll-up doors with 2.5-inch drive-over berm. There are two 16 feet long by 3 feet wide by 3 feet deep sumps (Sump No. 2 and Sump No. 3) in this area. Each sump has a capacity of 1,077 gallons. The Loading/Unloading Area is graded toward the sumps to collect any spills that potentially could occur during transfer operations. The content of the sumps are manually pumped to the Holding Tank.

The Loading/Unloading Area is used to transfer liquid waste from and to transport vehicles (tanker trucks, tanker trailers, etc) to the appropriate tanks in the Tank Storage and Treatment Area. The Loading/Unloading Area is also used for transferring of liquid waste from transport vehicle to transport vehicle (i.e., tanker truck to tanker truck, tanker truck to tanker trailer, etc.). Sampling of any drums brought to the Facility may also be done in this Unit. The Permittee may consolidate hazardous waste of the same waste type in containers.

Secondary containment for the permitted units is provided for by a series of berms, walls, and sumps within the facility. Truck parking is located outside the warehouse building.

Thus, DTSC believes that "sufficient redundant measures to ensure any potential spill/leak will be contained onsite" will be in place to prevent any possibility of contaminant migration to the subsurface media including the ground water.

Comment #I-4-2:

2. CleanTech should be requested to develop appropriate Operational Procedures regarding handling of materials. In addition, there should be an Emergency Notification procedure in place in the event of a spill. Please include the Watermaster on the notification list.

Response #I-4-2:

As required by California Code of Regulations, Title 22, Chapter 14, Article 4, the permit requires the Facility to have a contingency plan and emergency procedures in place to respond to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water. DTSC has reviewed these plans. DTSC will request that CleanTech include the Watermaster on the list of agencies to be notified in case of an event that triggers implementation of the CP.

Comment #I-4-3:

3. CleanTech should be requested to obtain sufficient insurance to satisfactorily fund remediation of any potential spill.

Response #I-4-4:

As required by California Code of Regulations, Title 22, Chapter 14, Article 8, the permit requires the Facility to provide both closure financial assurance and proof of environmental impairment liability coverage for third parties. Closure assurance must demonstrate the owner or operator's ability to pay for the complete closure and cleanup of the facility at the point at which the facility would be the most expensive to close. The closure cost must be updated annually and adjusted for inflation. CleanTech is required to provide financial assurance for closure in the amount of \$266,452. CleanTech is also required to have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs.

Comment #I-4-4:

1. It appears the off-loading ramp is surrounded by a four-inch rounded concrete berm and the drainage slopes away from the building toward a concrete sump. The sump and appurtenant facilities appear to be underground. Watermaster is concerned with the potential for leaks which may go undetected from these, and any other, underground facilities.

Response #I-4-4:

All floors are designed to slope toward concrete sumps to prevent any spills and leaks from leaving the facility. The sumps are part of the facility's secondary containment system and are not intended to store waste. The sumps are required to be inspected daily and any liquid in the sumps are pumped to a separate holding tank. The sumps are the only devices located underground.

Comment #I-4-5:

2. Process Area 2 appears to be sized to contain a spill of up to 33,600 gallons; however, the collective storage capacity of the eight storage tanks is 160,000 gallons. It appears the secondary containment (33,600 gallons) may not be adequate to contain a simultaneous failure of all storage tanks.

Response #I-4-5:

It is highly improbable for all the tanks to fail simultaneously. The California Code of Regulations, Title 22, Section 66264.193 requires the Facility to have a secondary containment system to contain the greater of 10 percent of the aggregate volume of all tanks or 100 percent of the capacity of the largest tank plus precipitation from a 24-hour, 25-year storm even. Since the tanks are located indoors, the requirement for containing precipitation from a 24-hour, 25-year storm is not applicable. The greater of 10 percent of the aggregate volume of all tanks or 100 percent of the largest container is 20,000 gallons. CleanTech included capacity of an additional 50% of the largest container (10,000 gallons) as a safety factor. Additionally, the Uniform Fire Codes requires containment from the fire sprinklers for 20 minutes which was calculated to be 3,600 gallons. Therefore, regulations require a secondary containment capacity of 23,600 gallons. The CleanTech facility will have 42% more secondary containment capacity than required.

Comment #I-4-6:

Watermaster appreciates the opportunity to review and comment on DTSC's Draft Hazardous Waste Facility Permit and Proposed Negative Declaration for CleanTech Hazardous Waste Treatment Facility at 5820 Martin Road in Irwindale. Watermaster encourages DTSC, as the agency with regulatory oversight, to require all necessary and appropriate precautions to ensure the Main Basin will not be adversely impacted by the proposed facility.

Response #I-4-6:

DTSC is mandated by statute and regulations to make permit decisions that are protective of public health and the environment. As part of the permitting process and in compliance with the California Environmental Quality Act, DTSC conducted an

environmental assessment of the project and determined that the project will not have any significant impacts to health human and the environment.

The following comments were received during the second public comment period:

Commenter #5: Todd Elliott

Comment #II-5-1:

I write to respectfully request the Department of Toxic Substances Control (“DTSC”) prepare an environmental impact report for the CleanTech Environmental Inc. Hazardous Waste Storage, Transfer, and Treatment Facility proposed for 5820 Martin Road, Irwindale, California (the “Project”). With the disclosure of the capacity of this proposed hazardous waste facility, the full extent of potential environmental impacts is much clearer. This facility obviously has the capacity to treat thousands of tons of hazardous waste per month.

Response #II-5-1:

Public Resources Code section 21151.1(a)(3) requires a lead agency to prepare, or cause to be prepared, an environmental impact report for the “initial issuance of a hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code to an offsite large treatment facility, as defined pursuant to subdivision (d) of Section 25205.1 of the Health and Safety Code.”

Health and Safety Code section 25205.1(d) defines a “large treatment facility” by two alternative definitions. Where total treatment capacity is provided in a permit, then it means a “treatment facility with capacity to treat, land treat, or recycle 1,000 or more tons of hazardous waste”.

The second part of the definition applies when total treatment capacity is not provided in a permit. In such a situation “large treatment facility” means a treatment facility that treats, land treats, or recycles 1,000 or more tons of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

The initial draft permit included the individual capacity of the treatment tanks at the facility, but did not provide the total treatment capacity for the facility. Special condition V.22 has been added to the permit which limits the total amount of hazardous waste that can be treated or recycled in any one month to less than 1,000 tons. With this condition, the facility does not fit the definition of an offsite large treatment facility, but does meet the definition of a small treatment facility.

Comment #II-5-2:

Attached is a report from Karen L. Ruggels, Principal of KLR Planning, an environmental expert, detailing the potential environmental impacts associated with a hazardous waste facility that has a capacity to treat many thousands of tons of hazardous waste per month. As KLR's report demonstrates, there are numerous deficiencies with the proposed Negative Declaration and Initial Study, particularly given the capacity of the proposed facility to process 8,000 tons or more per month of hazardous waste. The California Environmental Quality Act ("CEQA") unambiguously and explicitly requires DTSC to prepare an EIR for the Project. The failure of DTSC to require an EIR for the facility raises serious questions about DTSC willingness to protect the environment, businesses and residents in Irwindale and surroundings communities.

The California Environmental Quality Act specifically addresses hazardous waste facilities like the CleanTech hazardous waste facility project, and requires DTSC to prepare an EIR for the Project. Public Resource Code Section 21151.1(a)(3) requires an EIR for "large treatment facilities" under Health and Safety Code Section 25205.1(c). The Health and Safety Code, in turn, defines a "large treatment facility" as "a treatment facility that treats, land treats, or recycles 1,000 or more tons of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991."

The definition imposed by the statute is clearly based on a facility's physical capacity, not on an illusory condition DTSC may impose purporting to restrict the use of that capacity. Why would a facility be designed and built to a capacity far exceeding 1,000 tons if it is not going to be used? The Health and Safety Code definition clearly looks to physical capacity as does CEQA.

As the KLR report shows, the CleanTech hazardous waste facility's actual capacity exceeds 1,000 tons a month by a large margin. Used oil weighs approximately 7.3 pounds per gallon. The project description contained in the Initial Study makes clear that the hazardous waste facility's tank capacity is 243,240 gallons. According to industry experts, a typical used oil tank can be turned every 1-2 days. If the tanks are turned every 2 days, and assuming only 20 work days in a month, the capacity of the system would be as follows: $243,240 \text{ gallons} \times 7.3 \text{ pounds} \times 10 \text{ turns} = 17,756.520 \text{ pounds}$ / 2000 pounds in a ton = 8,878.26 tons. If the tanks are only turned 5 times a month, the capacity is 4,439.13 tons. In fact, if only 50% of the capacity of the tanks are used and they are turned only 5 times a month, the capacity would be 2,219.56 tons. Virtually any realistic way one looks at the "capacity" of this hazardous waste facility its capacity exceeds 1,000 tons a month.

The Project clearly has a capacity of much more than 1,000 tons per month and an EIR is clearly required for this Project. The proposed permit condition limiting treatment to 1,000 tons per month is irrelevant to calculating the Project's capacity under Health and Safety Code Section 25205.1. First, the Health and Safety Code is clear in defining Large Treatment facilities to mean those facilities that treats, land treats, or recycles 1,000 or more tons of hazardous waste during any one month of the current reporting

period commencing on or after July 1, 1991. Here it is clear that the actual capacity of the facility exceeds 1000 tons per month.

Response #II-5-2:

DTSC does not agree that the definition for a large treatment facility in Health and Safety Code section 25205.1(d) which is based on total treatment capacity is properly quantified by totaling a maximum theoretical throughput for the facility. The portion of the statute quoted by the commenter provides that: "large treatment facility" means a treatment facility that treats, land treats, or recycles 1,000 or more tons of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991." The statutory language specifically refers to the tons of hazardous waste actually treated or recycled by the facility during any one month, not the amount that it theoretically could treat or recycle. DTSC has added a condition to the Permit, Special Condition, V.22, that specifically limits the facility to treating or recycling less than 1,000 tons of hazardous waste during any month. With this special condition, the facility is properly identified as a small treatment facility (Health & Saf. Code §25205.1(j)), and not a large treatment facility (Health & Saf. Code §25205.1(d)).

Comment #II-5-3:

Moreover, the Supreme Court has specifically held that a lead agency cannot avoid analyzing a project's full capacity and buildout by imposing the type of condition DTSC has imposed here. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 444 (lead agency must assume full construction and use of approved project; condition limiting future use of approved project cannot limit scope of environmental review).

Response #II-5-3:

The case citation provided by the commenter concerns mitigation measures in an EIR which are not applicable here. DTSC has determined that the facility is properly characterized as a small treatment facility under Health and Safety Code section 25201.5(j). As such, an EIR is not mandated under Public Resources Code section 21151.1(a)(3). Additionally, DTSC has conducted an initial study of this facility project and believes that a negative declaration is appropriate.

Comment #II-5-4:

Further, by definition, the "project" a lead agency must analyze under CEQA, includes "reasonably foreseeable" environmental consequences of the project. Pub. Res. Code § 21065. The California Supreme Court specifically held that this includes future expansion: "an EIR must include an analysis of the environmental effects of future expansion" if "it is a reasonably foreseeable consequence of the initial project." *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376,

396. Here it is not even an issue of a future expansion, the capacity is being built. The facility's capacity must be included in determining the scope of environmental review. Clearly, when the Project has a physical capacity to process more—much more—than 1,000 tons per month, it is reasonably foreseeable that the Project will eventually use that capacity.

Response #II-5-4:

DTSC has conducted an initial study of this facility project and believes that a negative declaration is appropriate for the reasons explained in the initial study document.

Comment #II-5-5:

Additionally, even if one could argue that environmental analysis could somehow be limited to 1,000 tons and DTSC could ignore future expansion for which the Project is already sized, CEQA still requires an EIR if it can be shown if the Project may have a significant impact on the environment. *No Oil, Inc. v. Los Angeles* (1974) 13 Cal.3d 68, 85. This is a low threshold, and an EIR must be prepared even if the lead agency is “also [] presented with other substantial evidence that the project will not have a significant effect.” *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927. A fair argument that the Project may have a significant impact on the environment has been made in the prior comments on the Project as well as in the attached report by KLR Planning, which are incorporated herein by this reference.

Response #II-5-5:

DTSC has conducted an initial study of this facility project and believes that a negative declaration is appropriate for the reasons explained in the Initial Study document.

Also see Response to Comments #I-1-1.

Comment #II-5-6:

Any attempt to limit comments on the proposed Negative Declaration and Initial Study raises serious questions about the adequacy of the current review period. DTSC must consider the full scope of comments submitted and should issue a new comment period making it clear to the public that comments on significant environmental issues have been raised.

Response #II-5-6:

DTSC has not limited comments on the proposed Negative Declaration and Initial Study. DTSC considered all comments received during each comment period on the proposed Negative Declaration and Initial Study. DTSC does not believe that a new comment period is required or appropriate because DTSC has not added new and substantive requirements to the draft permit as it did after receipt of the public

comments during the first comment period. The second period solicited public comments to the items that had changed from the draft permit first made available for public comment. Comments duplicative of those received from the first comment period have been addressed.

Comment #II-5-7:

We urge DTSC to prepare an EIR for the Project. Failure to do so would be a clear breach of DTSC's obligations under CEQA.

Response #II-5-7:

Comment noted. However, DTSC has conducted an initial study of this facility project and believes that a negative declaration is appropriate for the reasons explained in the initial study document. Also, DTSC has concluded that the facility is properly characterized as a small treatment facility under Health and Safety Code section 25201.5(j). As such, an EIR is not mandated under Public Resources Code section 21151.1(a)(3) .

The following KLR Planning Report was submitted by Todd Elliott as an attachment to his comments (See Comment #II-5-2). DTSC will address these comments as though they were submitted by Karen the author of the Report.

Commenter #6: Karen L. Ruggels

I have reviewed the Initial Study and Draft Negative Declaration for the Hazardous Waste Facility proposed by CleanTech Environmental Inc. (CleanTech). The facility is to be located at 5820 Martin Road in the City of Irwindale. CleanTech has applied for approval of a Hazardous Waste Facility Permit by the Department of Toxic Substance Control (DTSC) to allow CleanTech to construct and operate a used oil recycling facility and to store drums of used oil, waste antifreeze, and non-Resource Conservation and Recovery Act (RCA) wastewater (Project). DTSC has prepared an Initial Study and Draft Negative Declaration in an attempt to comply with the California Environmental Quality Act (CEQA). However, in my review of the environmental documents prepared by DTSC, information provided in the Initial Study is not adequate to support adoption of a Draft Negative Declaration by DTSC. Rather, it is clear that the Project may have numerous significant environmental impacts, and DTSC must analyze these impacts in an environmental impact report (EIR). Moreover, as noted below, CEQA Section 21151(a)(3) requires that an EIR be prepared for the Project. It is clear that the CleanTech facility has a capacity far in excess of 1,000 tons per month and that the facility is being built for a capacity far in excess of 1,000 tons per month. As such Section 21151(a)(3) requires that an EIR be prepared for the Project.

I am a CEQA practitioner with more than 30 years of experience in preparing, processing, and reviewing environmental documents as staff at public agencies and as

a private consultant. Attached is my firm resume. I have prepared and processed hundreds of legally defensible CEQA documents throughout California. Additionally, I am a skilled planner with in-depth knowledge in local planning documents. This unique combination of skills and knowledge provides the necessary expertise to conduct a thorough review of the Initial Study and Draft Negative Declaration. In so doing, I have found that the Initial Study fails to address, or inadequately addresses, many environmental concerns that are required to be addressed under CEQA.

CEQA is intended to ensure that all environmental impacts and potential environmental impacts of a project are adequately considered. Based on CEQA Guidelines Section 15063, through the Initial Study process, the Lead Agency should be able to determine if the project may have a significant effect on the environment. However, the Initial Study must be conducted and prepared with a certain level of expertise and knowledge and rely on substantial evidence to determine its findings. Without this level of detail, the Initial Study becomes useless. In addition, as described in CEQA Guidelines Section 15070, CEQA has a very low threshold for when an EIR must be prepared. An EIR is required when there is substantial evidence of a fair argument that a project may have a significant impact on the environment. This standard is met for this Project. The Initial Study does not adequately disclose and analyze the proposed hazardous waste facility's impacts. Further, based on the information that is available, it is clear that the Project may have a number of significant impacts on the environment; certainly enough information is presented to show that CEQA's low threshold for requiring an EIR, is met. DTSC must prepare an EIR to fully review, analyze and mitigate the potential impacts of the Project.

It is surprising to see that a Negative Declaration for a hazardous waste facility does not include a single mitigation measure. CEQA requires analysis of the total physical capacity of the facility and not an arbitrary "limit" imposed by DTSC to avoid a specific requirement in CEQA to prepare an EIR. Based on the information presented and omitted, it is clear that the Project may have numerous significant impact on the environment that must be further analyzed an EIR. For impacts that are significant, the EIR must include mitigation measures to reduce impacts to below a level of significance. Additionally, the EIR must include a discussion of project alternatives, including alternative locations, which may reduce or avoid the project's significant environment impacts.

GENERAL COMMENTS

Comment #II-6-1:

The Project Requires Preparation of an EIR as a Large Treatment Facility

CEQA Section 21151.1(a)(3) requires that an EIR be prepared for “[t]he initial issuance of a hazardous waste facilities permit pursuant to Section 25200 of the Health Safety Code to an offsite large treatment facility, as defined pursuant to subsection (d) of Section 25205.1 of the Health and Safety Code.” According to Section 25205.1(d), a “large treatment facility” is defined as “a treatment facility with capacity to treat, land

*treat, or recycle 1,000 or more tons of hazardous waste.” A “small treatment facility” is defined as “a treatment facility with capacity to treat, land treat, or recycle more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste.” It is abundantly clear from the information presented in the Initial Study that the proposed hazardous waste facility will have a **capacity** far in excess of 1,000 tons per month. As such CEQA mandates that an EIR be prepared.*

DTSC has added a condition to the draft CleanTech permit that the authorized limit of hazardous waste that may be treated or recycled at the proposed facility is 1,000 tons per month, classifying the CleanTech facility as a “small treatment facility.” However, there is no discussion of how this limit is enforced or even how quickly the limit could be reached. It appears that DTSC has arbitrarily placed this limit on the Project for the sole purpose of identifying the facility as a "small treatment facility" without providing any meaningful basis upon which to determine if the facility can realistically stay within that limit based on its monthly operations. How much do facilities of a similar size treat and/or recycle on a monthly basis?

What are the limiting factors at this facility that would prevent the treatment of more than 1,000 tons per month? Why would a facility that is designed and built to treat several thousands of tons per month be limited to 1,000 tons per month except to avoid the legal requirement to prepare an EIR?

Additionally, the statute does not rely on "permitted capacity" but instead only speaks to "capacity." Looking at the different units to be permitted in the draft permit, it is clear that the actual capacity of the Project is much greater than 1,000 tons per month. For example, the total capacity of all of the units at the Project that are described in the draft permit is 243,240 gallons. Based on a specific gravity of 0.88, a gallon of oil weighs 7.34 pounds. Thus, the project can hold over 1.7 million pounds of oil (7.34 multiplied by 243,240). The Initial Study fails to disclose how many times a month the production will be turned over. Were this capacity to be turned over only twice a month, the Project would exceed the 1,000-ton per month threshold. It is likely that the capacity will be turned over far more frequently than twice per month, meaning that the Project is likely far over the 1,000 ton per month threshold. Similar facilities can turn over their capacity 10 to 15 times per month. If the facility is turned over 10 times a month, then the actual capacity would be in excess of 8,000 tons per month. Neither the Initial Study nor the Draft Permit provides any information with regards to industry standards for turn over of production capacity and what measures would be applied to the proposed project that would preclude the facility from exceeding the 1,000 tons per month limit. The Project should be defined as a "large treatment facility."

Even if the Project were somehow able to successfully argue that it did not meet the 1,000-ton per month of capacity threshold found in the statute, as a project that is likely to have environmental impacts, an EIR would otherwise be required by Public Resource Code section 21151.1(a)(3). By definition, the "project" a Lead Agency must analyze under CEQA includes "reasonably foreseeable" environmental consequences of the project. This has been subsequently refined by the courts to include reasonably foreseeable future expansion. Because the Project has the capacity to treat more than

1,000 tons per month, it is reasonably foreseeable that the Project may one day want to utilize the full capacity of the Project, putting it undoubtedly over the 1,000-ton per month capacity threshold. DTSC has misclassified the Project based on the statues, and preparation of an EIR is required.

Response #II-6-1:

Health and Safety Code section 25205.1(d) states that in those cases in which total treatment capacity is provided in a permit, a large treatment facility means a treatment facility with capacity to treat, land treat or recycle 1,000 or more tons of hazardous waste. The draft permit, Special Conditions, V.22, limits the total amount of hazardous waste that the Permittee can treat or recycle in any one month to less than 1,000 tons. This special condition specifically limits the facility total treatment capacity to under 1,000 tons. Because the total treatment capacity provided in the permit will be under 1,000 tons, the facility is properly denoted as a small treatment facility. (Health & Saf. Code §25205.1(j).)

A facility may only conduct those activities authorized in the permit. (Health & Saf. Code §25201(a).) Special Condition, V.22, specifically limits the total amount of hazardous waste that the Permittee can treat or recycle in any one month to less than 1,000 tons. A person who violates a provision of a permit is liable for civil penalties. (Health & Saf. Code §25189.2(b)). The draft permit that was noticed for public comment in November 2011 identified the facility as being a medium storage and treatment facility. As discussed in Response to Comments #II-7-3, this category does not exist in Health and Safety Code section 25205.1. DTSC has determined that the facility is properly identified as a small treatment facility with the limitation provided in Special Condition, V.22. The quantity of hazardous waste that other facilities may treat or recycle in a given month is irrelevant as this facility's total authorized capacity is limited by the special condition in the permit. (See Permit, Special Condition, V.22.)

As explained in Response to Comments #II-5-2 and #II-7-3, the definition of a large treatment facility in Health and Safety Code section 25205.1(d) is not based on the theoretical maximum throughput of the facility. The condition added to the Permit, Special Condition, V.22, specifically limits the authorization of the facility to treating or recycling less than 1,000 tons of hazardous waste during any month. With this special condition, the facility is properly categorized as a small treatment facility (Health & Saf. Code §25205.1(j)), and not a large treatment facility (Health & Saf. Code §25205.1(d)).

DTSC has conducted an initial study of this facility project and believes that a negative declaration is appropriate for the reasons explained in the initial study document.

Also see Response to Comments #II-5-1 and #II-7-3.

Comment #II-6-2:

Project Definition

The Initial Study makes reference to future actions and/or permits (such as a future permit from the Los Angeles County Sanitation District or a Storm Water Discharge Permit) that have not been analyzed in the Initial Study. This is in strict violation of CEQA. CEQA Guidelines Section 15378 defines a project as *"the whole of an action, which has a potential for resulting from either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment [...]"*. Under CEQA, the project as a whole must be analyzed. Anticipated subsequent actions associated with the Project, such as application for additional permits, are considered part of the Project as a whole and must be analyzed with the Project. The future actions that are part of the Project may cause significant environmental impacts. An EIR is required for the Project that includes the analysis of all project elements.

Response #II-6-2:

DTSC regularly references the permits that will be obtained. The Initial Study is submitted in the early phase of the project and is therefore appropriate to use the future. Additionally, the facility will not be discharging the hazardous waste into the sanitary system. Any rinse water from cleaning the outside of the tanks, secondary containment systems, and driveways will be collected and pumped into the non-RCRA wastewater tank where it will be shipped to an authorized offsite treatment or disposal facility.

Comment #II-6-3:

The Project is Not in Compliance with the City of Irwindale's Municipal Code

The proposed Project is located within the City of Irwindale's M-2 (Heavy Manufacturing) Zone. Section 17.56.010 of the Irwindale's Municipal Code lists the permitted uses in the M-2 Zone, and **hazardous waste treatment is not on the list of allowable activities**. Uses that the zoning code does not call out as allowed are prohibited. Therefore, hazardous waste processing is prohibited, because the zoning code does not list hazardous waste processing as an allowed use.⁶⁷ In order to allow hazardous waste treatment facilities in the M-2 zone, the City's Municipal Code must be amended. Additionally, the zoning code specifically regulates the type of use the Project will be: "processing facilities" that process recyclable material.⁶⁸ But the zoning code specifically prohibits processing facilities, like the Project, from accepting "hazardous materials, including but not limited to, automotive fluids."⁶⁹ Thus, the zoning

⁶⁷ City of Irwindale Municipal Code, §§ 17.56.010, 17.56.020.

⁶⁸ City of Irwindale Municipal Code, § 17.56.080.

⁶⁹ City of Irwindale Municipal Code, § 17.56.090(B)(12).

code specifically **prohibits** the Project's use, and the Project cannot be allowed unless the City of Irwindale amends its zoning code.

Even if the Project were allowed under the current zoning code (which it is not), it would require a Conditional Use Permit. Section 17.56.020 lists the uses requiring a Conditional Use Permit, *[b]ecause of considerations of smoke, fumes, dust, vibration, noise, traffic congestion, or hazard* (emphases added.) Because the proposed facility would "recycle" hazardous waste, it could be classified as "recycling facilities." Recycling facilities require issuance of a Conditional Use Permit by the City of Irwindale. Additionally, the proposed Project is a hazardous waste treatment facility with some degree of hazard involved. Because it will store and treat large volumes of used oil and other hazardous waste, there will be associated fumes and traffic.

Furthermore, Section 17.80.030 of the City's Municipal Code specifically states when Conditional Use Permits are required. According to Section 17.80.030, *"[a]ll uses which involve the use, sale, or storage of any materials classify as toxic or hazardous by either the federal or state government as a substantial part of the total use shall require a CUP, as shall the parking or storage of vehicles used to carry such materials."* The proposed Project certainly meets this definition. Therefore, the Project requires the City of Irwindale to amend its zoning code and to issue a Conditional Use Permit; and, as part of the City of Irwindale's Conditional Use Permit process, the applicant must provide substantiation *"that the proposed use will not have an adverse effect on adjacent property."* There is no information provided in the Initial Study that such an action would be required. This information is valuable in understanding the proposed Project; without it, the reviewer is deprived of a full and meaningful review of the Project.

Response #II-6-3:

In a June 23, 2012 letter, the City of Irwindale determined that the proposed expanded business operations involving the storage, transfer and treatment of used automotive and industrial fluids was appropriate for the M-2 Heavy Manufacturing zoning. The City of Irwindale is responsible for determining whether a land use decision is required for the siting of the proposed facility and the City determined that a land use decision is not required.

Comment #II-6-4:

Appropriateness of DTSC as Lead Agency

The requirement for a zoning code amendment and other City approvals brings into question whether DTSC can act as the Lead Agency for the Project. CEQA Guidelines Section 15051 provides guidance on the determination of which agency would be the Lead Agency for a project. Section 15051 (b)(1) states that *"[t]he Lead Agency will normally be the agency with the general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or district which will provide a public service or a public entitle to the project."*

Because the City of Irwindale must issue a permit for the Project, it has the general governmental powers and should, therefore, be the Lead Agency. DTSC is similar to an air pollution control district, as referenced in CEQA, and has limited powers, which would be classified as a Responsible Agency. Allowing Irwindale to assume the role of Lead Agency not only puts the burden of proof in issuing the local land use approvals on the City decision-makers, but also ensures that the CEQA study more accurately reflects the concerns of the local community. DTSC would still be responsible for review of the Project to issues a Hazardous Waste Facility Permit. Furthermore, in several places, the Initial Study references consistency with the City of Irwindale's policies. (See, for example, Initial Study item 4.f. under Biological Resources.) Without inserting the City's authority in reviewing and authorizing the Project, stating that the Project would implement the City's policies is spurious.

Response #II-6-4:

The City of Irwindale did not assume the responsibility of Lead Agency and as a result, DTSC is Lead Agency. Cal. Code Regs., title 14, Section 15051 (b)(1) does not preclude a department such as DTSC from acting as Lead Agency.

Comment #II-6-5:

Inadequate Discussion and Representation of the Santa Fe Dam Recreational Area

The State Fe Dam Recreational Area is located immediately south and west of the proposed facility. The Area is a valuable resource to Irwindale and the surrounding communities. Irwindale's General Plan identifies several endangered plants that call Irwindale home, along with many wildlife species that have the potential of being listed in the future; and the County of Los Angeles identifies the Area as a Significant Ecological Area. The Area, as an open expanse, is a sanctuary of many protected species, and thus is deserving of protection. Additionally, the Area is a gathering place for families and others who flock to the area to participate in its many recreational activities, like swimming, fishing, biking, horseback riding, hiking, and so on. No discussion of the potential impacts on the many species living in the Area, or the activities that take place in the Area daily, is included in the Initial Study.

Furthermore, when the Area is discussed in the Initial Study, it is done so with such brevity and with lack of supporting facts or analysis. For example, the Initial Study states, without any support, "DTSC cannot foresee any reasonable pathway for waste at the facility to impact the Santa Fe Dam Recreation Area." Yet, it is clear from the figures in the Initial Study that the Area is in extremely close proximity to the Project, and that to access the Project, trucks hauling hazardous waste will be required to pass by the Area. Moreover, contamination of the ground water and spills could adversely affect the Area. Therefore, it is entirely foreseeable that accidents and spills at the Project site or runoff from trucks as they pass have a real chance of impacting the Area. The Initial Study contains no information discounting the possibility that patrons enjoying the northeast corner of the Area will not notice odors, noise, or other impacts from the

Project. As such, there is no basis for DTSC's statement that there is no foreseeable way that the Project could impact the Area. The Project may have significant impacts on the Santa Fe Dam Recreational Area, and DTSC must analyze those impacts in an EIR.

Response #II-6-5:

The Santa Fe Dam Recreational Area (SFDRA) is within a highly urbanized area. Although the proposed facility is located in a highly industrial setting, biological resources can still be found in such locations. While threatened, rare, and/or endangered species were identified within the general area of proposed facility, a California Department of Fish and Game Natural Diversity Database search was conducted in order to identify potentially impacted species. No species listed in this search are located in or immediately around the proposed facility site.

The SFDRA is approximately .5 miles to the southwest of the proposed facility however, the trucks hauling the used antifreeze and used oil are not required to pass by the SFDRA. The entrance and exit for the proposed facility is from the north part of Irwindale Avenue onto Martin Street where the proposed facility is located.

INITIAL STUDY REVIEW

Comment #II-6-6:

Project Description

The Initial Study makes vague remarks about transport of the hazardous materials that would be created at the proposed facility (such as "primarily uses Interstate 210"). However, it appears that trucks could also use a variety of other routes to access the facility, some of which traverse residential neighborhoods. The Initial Study should include a map that shows the transport route. Additionally, if the Initial Study is dependent on transport routes that do not go through residential neighborhoods – as is implied in the Initial Study – the Project should be conditioned such that trucks must follow a specific route to access the facility. The routes that may be used to access the facility must be presented in the EIR to address the potential significant impacts from transporting hazardous materials.

Response #II-6-6:

Maps showing truck access to the proposed facility appear on pages 43 and 44, Figures 8 and 9, respectively, of the Initial Study.

Comment #II-6-7:

Initial Study Item 3: Air Quality

For a project of this size, a project-specific air quality analysis is generally required, particularly given the potential for release of hazardous fumes and emissions and the proximity of sensitive receptors in the Project area. It is unusual that DTSC has failed to include a project specific air quality analysis for the Project. An air quality analysis should be prepared that clearly evaluates whether air quality impact could result from the Project.

With regard to item 3.d., the Initial Study states that there are no sensitive receptors in the area. It appears that an analysis of sensitive receptors in the Project area was not conducted, as this statement is incorrect.

The sensitive ecological area is in very close proximity to the Project. In addition, the recreation area is park frequented by thousand of people. In addition, two daycares are located within a half-mile of the Project, and it appears that many daycares are within three miles of the Project. A high school and five elementary schools are within a mile and a half of the Project. Numerous nursing homes, assisted living centers, and other similar facilities are within three miles. There are sensitive receptors in the vicinity of the Project, and the Project may have significant impacts on them. DTSC must analyze these potential significant impacts in the EIR.

Response #II-6-7:

Project impacts to air were considered. Net increase in pollutant emissions related to the proposed facility construction and those related to overall facility operations were considered individually due to the South Coast Air Management Quality District's (SCAMQD) separate thresholds for each phase. Results show that the baseline and overall net increase of emissions are below the SCAQMD's significance thresholds and localized significance thresholds (LST). The LSTs represent the maximum emissions from a project that are not expected to cause or contribute to an exceedance of the most stringent applicable federal or state ambient air quality standard.

Comment #II-6-8:

Initial Study Item 4: Biological Resources

While, as stated in the Initial Study (page 17), it is recognized that the Project site is within a "heavy industrial zone", it is also located immediately adjacent to the Santa Fe Dam Recreational Area, one of the largest and most important sensitive ecological areas in the region. Not only does the Santa Fe Dam Recreational Area serve as a valuable park and recreation resource for residents of Irwindale, Azusa, and other cities in the San Gabriel Valley, but is also home to many protected native plants and animals.

The Initial Study focuses on the distance of the proposed facility to the "paid parking lot entrance" and the "swim beach". The Initial Study acknowledges that "[a] number of threatened, rare, and/or endangered species are identified as being within the general area of the Facility", but then dismisses this fact by stating that "the Facility and surrounding area is highly urbanized and does not have any sensitive habitat to impact." However, this statement is not supported by any factual information or analysis. A biological resources survey and report has not been prepared. It is unclear where sensitive habitat, threatened, rare, and/or endangered species are located relative to the Project site and proposed facilities. Without this factual information, DTSC cannot conclude that there would be no direct, indirect, or cumulatively significant impacts to biological resources. Stating that the "California Department of Fish and Game (DFG) reviewed the CleanTech Initial Study and provided no comments" is completely understandable given the complete lack of information and analysis in the Initial Study to allow for thoughtful review. In fact, DTSC completely ignores the existence of the sensitive ecological area in the first draft of the Initial Study and Draft Negative Declaration and then mentions it only in passing in the second draft environmental document. DTSC has shirked its responsibility to conduct a thorough analysis in order to determine the extent of the Project's risk to biological resources. No information or analysis is presented by DTSC regarding the "threatened, rare, and/or endangered species are identified as being located within the general area of the Facility" that DTSC acknowledges are present. How is the public or decision makers supposed to evaluate the adequacy of the environmental document when the information to do so is non-existent?

Initial Study item 4.f. states that the proposed Project will be implemented consistent with the City of Irwindale's policy as it relates to maintaining current data and information biological resources including the types of habitats, individual species, and their locations. However, except for conducting a generalized search for sensitive and endangered species, **a biological resources survey and report has not been prepared**; and there is no other indication as to how the proposed Project will maintain current data and information on biological resources. This fails to meet CEQA's minimum standards of disclosure and analysis. The Project is adjacent to a protective area that provides habitat for threatened, rare, and endangered species and may impact these sensitive resources through spills, air emissions, water discharges, or foreseeable accidents. These potential impacts must be analyzed and in the EIR; and mitigation measures must be implemented to reduce significant impacts to below a level of significance.

The Lead Agency must require that a biological resources survey and report be prepared for the proposed project that addresses the project's potential for direct, indirect, and cumulative effects. Specific project design features, specific permit conditions, and any mitigation measures that will ensure that no impacts to biological resources occur must be discussed and imposed in an EIR. The Draft Negative Declaration fails to include a single mitigation measure designed to protect the adjacent sensitive habitat.

Response #II-6-8:

A biological survey was not done. There are sensitive species near the proposed facility and at the SFDRRA which contains the nearest sensitive habitat. However, most project activities will take place within the interior of an existing building. Waste water will not be discharged into the sewer system, but rather, manifested and subsequently removed as hazardous waste by a Department of Toxic Substances Control (DTSC) registered waste hauler. Secondary containment and berms will be in place within the interior of the proposed facility. Facility employees and DTSC haulers are trained in spill containment should a spill occur. Air emissions are below the SCAQMD's significance thresholds and localized significance thresholds (LST). DTSC haulers are not required to drive past the SFDRRA.

Comment #II-6-9:

Initial Study Item 5: Cultural Resources

The discussion under item 5 of the Initial Study states that “[i]n the event that archaeological or paleontological resources should be encountered during excavation and grading activities, the City General Plan states all work would cease until appropriate salvage measures are established.” Additionally, the Initial Study states that “it is possible that project activity could unearth previously unknown human remains.” These issues constitute, potentially significant Project impacts under CEQA, and require DTSC to analyze the potential significant impacts in the EIR and adopt mitigation measures. The EIR must include mitigation measures to ensure that impacts can be reduced to below a level of significance. However, no mitigation measures are identified in the Negative Declaration or as conditions of the permit. This is in violation of CEQA. Cultural resources must be addressed in the EIR, clearly indicate the potential to encounter unknown cultural resources, and require mitigation measures in the event that resources are encountered. Additionally, in accordance with CEQA Guidelines Section 15097, a Mitigation Monitoring and Reporting Program must be adopted.

Response #II-6-9:

The excavation discussed in the Initial Study consists of old cement flooring being removed. New flooring will be poured in the same area. If any archaeological or paleontological resources are discovered all work will cease according to the City of Irwindale's General plan and California Law.

In the event that archaeological or paleontological resources should be encountered during excavation and grading activities, the City General Plan states all work would cease until appropriate salvage measures are established.

Appendix K of the California Environmental Quality Act (CEQA) Guidelines shall be followed for excavation monitoring and salvage work that may be necessary. Salvage

and preservation efforts will be undertaken pursuant to Appendix K requirements outlined in CEQA.

Even though it is highly unlikely that human remains are present on the site it is possible that project activity could unearth previously unknown human remains. If this were to occur during construction, CleanTech shall implement the process specified by the California Health and Safety Code, section 7050.5(b):

- 1. In the event of discovery and recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the coroner of the county in which the human remains are discovered has determined, in accordance with Chapter 10 (commencing with §27460) of Part 3 of Division 2 of Title 3 of the Government Code or any other related provisions of law concerning investigation of the circumstances, manner and cause of any death, and the recommendations concerning the treatment and disposition of the authorized representative, in the manner provided in Section 5097.98 of the Public Resources Code. The coroner shall make his or her determination within two working days from the time the person responsible for the excavation, or his or her authorized representative, notifies the coroner of the discovery or recognition of the human remains.*
- 2. If the coroner determines that the remains are not subject to his or her authority and if the coroner recognized the human remains to be those of a Native American, or had reason to believe that they are those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission.*

Comment #II-6-10:

Initial Study Item 6: Geology and Soils

The discussion of Geology and Soils appears to be based on the applicant's permit application, which states that *"the Facility is not within 3,000 feet of an active earthquake fault[...]."* CEQA requires that the Lead Agency conduct an independent review of the proposed project's impacts. The Lead Agency cannot rely on hearsay from the applicant unless such statements can be supported by technical expertise. Therefore, the Lead Agency should require that a geotechnical report be prepared for the project that accurately evaluates the potential for geologic hazards, seismic risks, liquefaction and seiche risks. It is important to note that the proposed facility is close to a large body of water. There is no analysis of potential risks associated with a seismic or other event causing a release of water from the Sante Fe Dam area. Such an analysis must be included in the EIR.

It appears in reviewing the *References Used* for the discussion of Geology and Soils that DTSC relied on information presented in the *Target Store Redevelopment Project **Draft** Environmental Impact Report*. The Initial Study cannot rely on information in a **draft** document that has not yet been certified by a Lead Agency, which questions the validity of the analysis in this section of the Initial Study.

Response #II-6-10:

DTSC reviewed the 2010 Fault Activity Map of California published by the California Department of Conservation, California Geological Survey Section. This map does not show any Historic Faults defined as displacement within 200 years near the facility. The closest fault, the Walnut Creek Fault runs northeast-southwest and is located six miles southeast of the facility.

Comment #II-6-11:

Initial Study Item 8: Hazards and Hazardous Materials

The discussion under item 8.a. completely ignores the analysis of the Project's potential to “create a significant hazard to the public or the environmental throughout the routine transport” (emphasis added). Nowhere does the Initial Study evaluate the transport route for trucks loaded with hazardous materials and accessing the facility. While the Initial Study implies that transport would be via Interstate 210, review of circulation in the Project area reveals that there are many other logical routes that trucks could follow, some of which are through residential neighborhoods. Nowhere in the Negative Declaration is there a mitigation measure requiring any particular routing for hazardous waste trucks. All potential access routes to the facility must be presented in the EIR and the potential for significant impacts associated with transport of hazardous materials must be addressed. DTSC should consider mitigation that would limit the route of transport to the facility along specified roadways.

Where there will be millions of gallons of hazardous waste transported, there is the potential for spills and other incidents, even when the best practices are employed, but the Initial Study takes the approach that these spills and incidents might only happen at the Project site, and not anywhere else. This is clearly, not the case, as tanker trucks will be required to transport the hazardous waste and oil to and from the Project site. Impacts outside the confines of the Project due to accidents, by an employee or transporter, are readily foreseeable and must be analyzed, especially where there is the possibility that the Santa Fe Dam Recreational Area or one of the many nearby sensitive receptors could be impacted. These potential impacts must be analyzed in an EIR.

The discussion under item 8.a. states that the flashpoint for used oil is fairly high – approximately 400°F – and concludes that the possibility of a fire starting without an external source is minimal. However, the Initial Study also recognizes that *sparks, open flame, and cigarettes* could be a source of ignition. What precludes these sources –

particularly sparks and cigarettes – or particularly an accident from occurring? These significant impacts must be analyzed in the EIR and appropriate mitigation measures presented.

Response #II-6-11:

DTSC does not ignore that a potential spill is possible as wastes are transported to the facility. A spill could potentially occur at any time from pick up to delivery. This however is a remote possibility, not a certainty. DTSC haulers are trained in spill containment. This is a highly urban area where the access for emergency vehicles and first responders to sight if a spill occurs is expected to take the shortest time possible. The Initial Study provides route maps that the hazardous waste haulers will take (please see Figure 9, page 44). The Initial Study mentioned every eventuality with regard to ignition sources for completeness. There is no smoking in or around the facility, or at facilities that discharge into the haul trucks. DTSC cannot ensure against every eventuality regarding ignition sources.

Comment #II-6-12:

Initial Study Item 9: Hydrology and Water Quality

This section includes inconsistencies with regards to wastewater discharge. Specifically, this section states that *“wastewater will [...] be shipped to an authorized offsite treatment or disposal facility. If in the future, CleanTech does want to discharge into the sewer system, CleanTech will apply to both the Public Works and Los Angeles County Sanitation District for an industrial wastewater discharge permit.”* However, in the discussion of item 6.e, the Initial Study states that *“[m]unicipal wastewater from the site is discharged to a sanitary sewer.”* Other sections of the Initial Study state: *“[w]ater from containment areas is collected and pumped into a holding tank, tested to determine if it is hazardous, and either released to the POTW in accordance with permit discharge limits or disposed of offsite as hazardous waste.”* These inconsistencies must be corrected in the EIR.

The Initial Study contains no analysis of the potential transport issues associated with shipping of wastewater which is required to be transported offsite (traffic, greenhouse gases, air quality, hazards). There is no discussion of where offsite wastewater would be transported or the capacity of offsite facilities to handle the additional wastewater. The EIR should include an estimate of the number of truck trips, quantities of wastewater to be disposed, and the capacity of the wastewater sewer system. The environmental document must analyze any future permits required to dispose of wastewater into the wastewater treatment system, if it is reasonably foreseeable as is implied in the Initial Study.

Even where the best containment methods are in place, there still could be a release from the Project, yet the Initial Study discounts this possibility and then skips any analysis of what impacts a release could have on local groundwater and surface water

resources. Clearly the lake and beach at the Santa Fe Recreational Area could be impacted by a release of oil that it washed away from the site in a storm. The Initial Study acknowledges that the San Gabriel Canyon basin aquifer is under the Project, but an analysis of the likelihood of impacts to this aquifer has not been conducted. Irwindale's General Plan discusses the aquifer underlying the Project as one that has potential to be used as a water source, but if it is impacted by contamination from industry in Irwindale, like the Project, its utility as a water source will be limited. Based on the other deposits in the area, it is likely that the project is situated on top of alluvial deposits from the San Gabriel River, meaning that it would likely be on top of high porosity soils that could quickly transport any released fluids downward and into the aquifers. Because these significant impacts are reasonably foreseeable, they must be analyzed and mitigated in an EIR.

Response #II-6-12:

The facility will not be discharging the hazardous waste into the sanitary system. Any rinse water from cleaning the outside of the tanks, secondary containment systems, and driveways will be collected and pumped into the non-RCRA wastewater tank where it will be shipped to an authorized offsite treatment or disposal facility. Hazardous waste water will not be discharged into the sanitary sewer system. Municipal waste water will be discharged into the sanitary sewer system. Municipal waste water conceivably contains human waste, potable and non-potable water. Potential transport issues were discussed in Section 16 - Transportation and Traffic.

Comment #II-6-13:

Initial Study Item 10: Land Use and Planning

Relative to Land Use and Planning, the Initial Study is severely lacking in its presentation of existing and planned land uses and zoning, as well as discussion of the applicable General Plans policies and Zoning regulations. Without this detailed discussion, the basis for determining potential impacts associated with Land Use and Planning is missing. Not only does the Project require a zoning code amendment and appear not to be consistent with the Irwindale General Plan (sufficient information to make such a determination is lacking), the Project has not been analyzed to determine whether it meets the various goals of the General Plan. Until this analysis is done, a conclusion on whether the Project would conflict with any applicable *land use plan, policy, or regulation* cannot be made. An EIR is required that includes this analysis, and both the City of Irwindale and the City of Azusa must be consulted. Furthermore, due to the Project's location within the City of Irwindale and adjacent to the City of Azusa, both the Irwindale and Azusa General Plans should be evaluated. It is not uncommon for adjacent jurisdiction to contain different – and sometimes conflicting – policies with regard to land use. Additionally, the discussion of Land Use and Planning should be expanded to address any *applicable habitat conservation plan or natural community conservation plan* that occurs in the Project area; or in the least, state that there are no

habitat conservation or natural community conservations plans that could be affected by the Project.

The project also does not appear to have consulted with the fire department and local authorities to coordinate transportation of hazardous materials through Irwindale as required by the General Plan. Nor does the Initial Study make any findings about the potential for accident in Irwindale, something specifically contemplated in the General Plan. Simply checking “*No Impact*” under issues areas 10.a. and 10.b. is not acceptable and in strict violation of CEQA. The Project may have significant impacts related to land use. These impacts must be addressed in the EIR, and mitigation measures must be provided to reduce significant impacts to below a level of significance.

Response #II-6-13:

Please see Response to Comment #II-6-3 regarding zoning regulations for the City of Irwindale. Regarding the second paragraph of comments, the Irwindale General Plan addresses the point that transportation of chemicals and other hazardous substances present public safety problems. Hazardous waste transporters are trained in spill containment as are first responders who would be undoubtedly called to the scene of a spill. The City of Irwindale’s General Plan also states that the Fire Department shall also work with local law enforcement officials in regulating the transport of hazardous materials through the City. The following excerpt is taken from the General Plan,

Hazardous Materials Control. The City shall continue to cooperate with County, State, and Federal agencies involved in the regulation of hazardous materials storage, use, and disposal. The City shall work with the County Fire Department in requiring hazardous materials users and generators to identify safety procedures for responding to accidental spills and emergencies. The Fire Department shall also work with local law enforcement officials in regulating the transport of hazardous materials through the City. The City will continue to promote the safe disposal of —hazardous and toxic substances used in private households through the support of —Hazardous Materials Collections conducted at specific locations and times within the City.

DTSC has determined that the appropriate level of protection exists to minimize impacts should a spill occur.

Comment #II-6-14:

Initial Study Item 12: Noise

It appears in reviewing the *References Used* for the discussion of Noise that DTSC relied on information presented in the *Irwindale Materials Recovery Facility and Transfer Station Project **Draft** EIR*. The Initial Study cannot rely on information in a draft document that has not yet been certified by a Lead Agency. Therefore, the validity of their analysis of Noise impacts is questionable. The Project will introduce additional heavy trucks and industrial processes almost adjacent to the Santa Fe Dam Recreational Area. This may cause significant noise impacts, which must be analyzed in the EIR.

Response #II-6-14:

The project is in an area zoned for heavy industry. DTSC relied upon the guidelines from the Department of Health Service's Office of Noise Control to determine the impact from the project.

The truck traffic is calculated to increase by 18 truckloads maximum during the day. For the above reasons DTSC finds that the impact to the resources from noise will be less than significant or no have impact.

Comment #II-6-15:

Initial Study Item 14: Public Services

The Initial Study does not include evidence to support the conclusion that the Project would not result in significant impacts to public services. Instead, the Initial Study makes a general statement that the Project "*will not impact existing fire or police rations, response times, or other performances objectives.*" However, there is no evidence that service providers were even consulted during conduct of the Initial Study or that current service and response times are adequate to serve the Project and surrounding areas. Service providers, including Fire and Police, should be consulted to determine if the proposed facility would impact existing resources.

Response #II-6-15:

The Los Angeles County Fire Station #48 and the Police Departments of Irwindale and Azusa can be consulted regarding this issue.

Comment #II-6-16:

Initial Study Item 16: Transportation and Traffic

The Initial Study does not include a discussion of the potential routes that trucks hauling hazardous materials will use to access the facility. Therefore, the Initial Study does not adequately address item 16.c. – *substantially increase hazards due to [...] incompatible uses*. The project requires transport of hazardous materials, and there is an inherent risk in potential for accident associated with this transport. The Project may cause significant impact in transportation of hazardous materials, which must be addressed in the EIR. Transport routes could traverse residential neighborhoods. However, the Initial Study does not address the potential for accidents to occur and what measures and/or precautions would be implemented to ensure that risks are reduced to below a level of significance.

Response #II-6-16:

Maps showing truck access to the proposed facility appear on pages 43 and 44, Figures 8 and 9, respectively of the Initial Study. The area is zoned for heavy manufacturing. The City of Irwindale determined that operations involving the storage, transfer, and treatment of used automotive and industrial fluids are an appropriate use for this zone. It is therefore implied that the transportation routes to accommodate this activity are adequate.

Comment #II-6-17:

Initial Study Item 17: Utilities and Service Systems

Item 17.a. states: *"[i]f approved, the Facility will apply Storm Water Discharge Permit."* CEQA Section.15378 defines a project as *"the whole of an action, which has a potential for resulting from either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment [...]"*. Under CEQA, the Project as a whole must be analyzed. Anticipate subsequent actions associated with the Project, such as application for an additional permit, are considered part of the Project as a whole and must be analyzed with the Project. Additionally, the Initial Study does not address the potential impacts associated with urban runoff that could be laden with pollutants and how such runoff would affect adjacent sensitive areas, such as the Santa Fe Dam Recreational Area. Deferring this analysis to the Water Quality Control Board does not provide the public with the thorough investigation of impacts required by CEQA for an Initial Study. Potential impacts of urban runoff from the Project must be addressed in the EIR.

Under the discussion of solid waste generation (item 17.f.); the Initial Study states that the facility would use the Azusa Land Reclamation Landfill for disposing of solid waste and the Landfill *"has sufficient permitted capacity for disposal of current hazardous waste generated by the Facility."* How can the future quantities be determined without

knowing what the lifetime is for the Landfill and how much hazardous waste would be generated by the facility? The Initial Study fails to include any of these quantities. Also, the Initial Study speaks to "*current hazardous waste*". Are there potential impacts that could occur in the future, during the lifetime of the facility, that would affect the Landfill? There are no facts or other basis to support the Initial Study's conclusion that "*the project is not expected to increase the amount of waste to be disposed in a landfill.*" The Projects potential impact to landfill capacity must be disclosed and analyzed in the EIR.

Response #II-6-17:

The project proponents will have to comply with the conditions of the Storm Water Discharge Permit which are written by the Regional Water Quality Control Board that covers the area in which the facility project is located. The permit will require the following information listed below. It is not a complete list of information required by the Regional Water Quality Control Board, but it addresses the comment.

- *Names, addresses, and telephone numbers of the owner(s) of the facility, the owner's authorized agent, and any lessee(s) of the facility;*
- *Description of the facility or activity, including whether the applicant proposes to increase or change an existing discharge or create a new one;*
- *Location of the operation by section, township, and range with a USGS 7.5 minute series topographic map attached;*
- *Description of the discharge by type, quality, quantity, interval, and method of discharge;*
- *Source of water that contributes to or transports the waste;*
- *Water flow and location map, identifying all discharge points;*
- *and*
- *Statement noting whether an environmental document has been or must be prepared and submitted in a timely manner.*

The Initial Study correctly states that the proposed facility will obtain a Storm Water Discharge Permit.

Comment #II-6-18:

Mandatory Findings of Significance

An important and essential element in making the Mandatory Findings of Significance is consideration of a project's cumulative impacts. It is obvious that DTSC has not conducted an analysis of cumulative impacts to support its finding that *the Project does not have impacts that are individually limited but cumulatively significant*, as required in Mandatory Findings of Significance "b". Review of Exhibit 6-4 in the City of Irwindale's General Plan indicates that there are numerous hazardous waste sites in the City. Additionally, review of EnviroFacts indicates that there are no less than 12 EPA-

regulated facilities within a 300-foot radius of the proposed Project, which either generate, transport, treat, store, or dispose of hazardous waste. It is unknown what other additional projects currently under review in the City (such as the *Irwindale Materials Recovery Facility and Transfer Station Project*) or adjacent cities and how many future projects could be anticipated that would also involve storage, treatment, and/or transport of hazardous wastes. When *viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects*, the Initial Study does not have the information and analysis required to conclude that there would no significant environmental impacts associated with the Project. Therefore, DTSC cannot make the Mandatory Findings of Significance. DTSC must analyze the Project in an EIR – together with all potential cumulative impacts from past, current, and reasonably foreseeable projects.

Response #II-6-18:

DTSC's examination of the conclusions reached in each of the Resource sections within the Initial Study determined that cumulative impacts associated with the proposed project would be less than significant, or have no impact on the environment in this community and therefore DTSC concludes that the proposed project will not result in a significant cumulative impact on the environment.

Comment #II-6-19:

Determination of Appropriate Environmental Document

As described above, the Initial Study is lacking in the most basic information and analysis about key parts of the Project. Despite the amount of information and analysis from the Initial Study, it can readily be seen that the Project may cause significant environmental impacts. DTSC must conclude that the Project **may have** a significant impact on the environmental and that an EIR is required to analyze and mitigate those impacts. Moreover, CEQA Section 21151.1(a)(3) requires the preparation of an EIR. The facts clearly demonstrate that this is a "large treatment facility" and requires an EIR. Moreover, it is reasonably foreseeable that this facility will treat many thousands of tons per months. An EIR is mandated.

Response #II-6-19:

The proposed project was thoroughly analyzed for impacts to the environment covering seventeen separate categories contained in the Initial Study. DTSC determined that it is the appropriate document for this project.

Comment #II-6-20:

CONCLUSION

In my experience of over 30 plus years of professional planning, environmental analysis, and project management in both the public and private sectors, it is my expert opinion that DTSC cannot rely on the Initial Study, as currently prepared, to support its determination that a Negative Declaration can be adopted for the proposed Project. There are clearly potential impacts that will be caused by this Project that have not been disclosed in the Initial Study, and the discussion of other environmental issue areas is not supported by factual analysis. Each of the issues presented in this letter presents a strong basis to conclude that the Project may have significant environmental impacts. DTSC must reconsider its CEQA analysis and prepare an EIR. Furthermore, preparation of an EIR is required for the Project, as the facility meets the definition of a "large treatment facility." The Project should be submitted to the City of Irwindale for review as Lead Agency.

Response #II-6-20:

The proposed project was thoroughly analyzed for impacts to the environment covering seventeen separate categories contained in the Initial Study. As previously stated, the City of Irwindale did not accept the role of lead agency. The City apparently does not believe a land use decision is required.

Commenter #7: Robert E. Brown III

Comment #II-7-1:

Thank you for your recent letter regarding the Second Public Comment Period: May 18 to July 05, 2012. In item #2 of the letter it states "that the amount of hazardous waste that may be treated or recycled each month is less than 1,000 tons". It is our view that if used oil meets the state used oil purity standards for recycled oil prior to treatment at a permitted facility it can be certified as "Recycled Oil" even though it was never treated or recycled. To this point this type of certified used oil should not be included in the total monthly gallons treated or recycled at the facility as per the industry standard. Thank you for your clarification, we look forward to serving the state of California in providing leadership in responsible recycling!

Response #II-7-1:

In general, recycled oil can only be produced in California by a generator lawfully recycling its used oil and by a used oil recycling facility. (See Health & Saf. Code § 25250.1(a)(3).) Generators must meet specific requirements to lawfully recycle used oil. (See e.g., Health & Saf. Code §§ 25250.1(a)(3), (b) and (c); 25250.19(b), (c), and (d).)

Used oil recycling facilities producing recycled oil in compliance with California law are by definition treating and recycling used oil. A used oil recycling facility is defined to mean: "A facility that reprocesses or re-refines used oil." (Health & Saf. Code § 25250.1(a)(4).) The word processing means treatment. (Health & Saf. Code § 25119.) Because a used oil recycling facility by definition is reprocessing which means processing again, this processing is treatment under California law. Additionally, recycled oil can only be produced at a used oil recycling facility that has received a permit to operate solely by means of one or more processes specifically authorized by DTSC. (Health & Safety Code § 25250.1(a)(3)(A)(ii)(II).) Again, by legal definition, a used oil recycling facility produces recycled oil using treatment specifically authorized by DTSC.

A used oil recycling facility cannot certify used oil as recycled oil unless the used oil has been prepared for reuse. (Health & Saf. Code §25250.1(a)(3)(A)(iii).) The term "recycling" by definition means reuse. (Health & Saf. Code § 25121.1.) Therefore, used oil recycling facilities producing recycled oil in accordance with legal requirements are by definition recycling. All recycled oil legally produced at a used oil recycling facility by legal definition have been treated or recycled at the facility. The recycled oil must therefore be included in the quantity of used oil treated or recycled at the used oil recycling facility.

It is also important to note that meeting the purity standards in Health and Safety Code section 25250.1(a)(3)(B) is only one of the requirements for recycled oil. For used oil to meet the definition of recycled oil all of the requirements in Health and Safety Code section 25250.1(a)(3)(A)(i) through (iii) must be met. Health and Safety Code section 25250.1(a)(3)(C) also requires that persons authorized by DTSC to recycle used oil shall maintain records of volumes and characteristics of incoming used oil and documentation concerning the recycling technology utilized to demonstrate to the satisfaction of DTSC that the recycling has been achieved in compliance with the requirements of Health and Safety Code section 25250.1(a)(3). The view posited by the commenter does not meet all of the legal requirements set forth in Health and Safety Code section 25250.1(a)(3)(A)(i) through (iii).

Comment #II-7-2:

Thank you for your notification of an additional Public Comment Period: May 18 to July 05, 2012. Your letter states "comments received during the public comment period...", but you never stated what comments. Under the California Public Records Act, could you please provide me a copy of the specific comment letter or explain which specific comment concerned itself with the specific size of our facility? Please show which specific comment warranted an additional Public Comment Period on items 1 and 2 from your letter. It is our contention that these items were clearly addressed in the permit application.

Response #II-7-2:

See Comment of Mark Gallagher dated January 7, 2012, pages 2, 5, 11-24, and 33, in particular. In response to his Public Records Act request, the commenter was provided a copy of the comments received. The referenced comments of Mr. Gallagher asking for an EIR to be performed necessarily led DTSC to review the draft permit to determine the production capacity for the facility because production in excess of 1,000 tons per month automatically triggers a requirement to do an EIR, by operation of Public Resources Code section 21151.1(a)(3). Further, a common theme in Mr. Gallagher's comments is that an EIR is required and a thorough consideration of that comment leads to consideration of air, noise, and other impacts which are usually associated with the level of activity at the facility, and this led DTSC to discover that the capacity was not clearly stated or limited to levels below which an EIR is automatically required, as state above. Because the facility is not allowed to operate in excess of the monthly 1,000 ton limit because of the added permit condition, the impacts which would probably increase with production, such as air and noise, could be more accurately assessed.

Comment #II-7-3:

Additionally, the public notice stated "in the course of reviewing the draft permit that was previously made available for public comment, the California Department of Toxic Substances Control (DTSC) determined that the draft permit did not clearly describe the treatment and recycling capacity for the facility or its category for fee purposes. This information is pertinent to determination of fees, determination of the authorized hazardous waste treatment and recycling capacity of the facility, and whether preparation of an EIR is mandatory under Public Resources Code section 21151.1(a)(3), which requires an EIR for a new large treatment facility as defined by Health and Safety Code section 25205.1(d)." Health and Safety Code section 25205.1(d) defines a large treatment facility as "**In those cases in which total treatment capacity is provided in permit, interim status document, or federal Part A application for the facility, means a treatment facility with capacity to treat, land treat, or recycle 1,000 or more tons of hazardous waste.**" In those cases in which it is **not** so provided, "large treatment facility" means a treatment facility that treats, land treats, or recycles 1,000 or more tons of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991." [Emphasis Added]. Our draft permit **does** provide the total treatment capacity for the facility. On page 29 of our draft permit, Table 6 clearly shows that our total treatment capacity is 160,000 gallons or roughly 584 tons. This is much less than 1000 tons. Since the total treatment capacity was provided in the draft permit, the remainder of Health and Safety Code section 25205.1(d) is not applicable. Therefore, we request that Special Condition V.22 be removed from the permit since it conflicts with Health and Safety Code section 25205.1(d).

Response #II-7-3:

DTSC does not agree that the "total" treatment capacity of the facility is 160,000 gallons or 584 tons. The 160,000 gallons or 584 tons represents the storage capacity of the

individual treatment tanks only. The “total” treatment capacity in the permit should reflect the amount of used oil that will be treated or recycled monthly by the facility; in other words, the monthly treatment and recycling throughput using the authorized treatment tanks. The special condition in Part V.22 does not conflict with Health and Safety Code section 25205.1(d), but in fact is consistent with the statute. DTSC has determined that the “total” treatment capacity specified in the permit should include the number of tons of hazardous waste that is treated or recycled in any one month. DTSC believes the “total” treatment capacity that is placed in the permit should be the same as required by Health and Safety Code section 25205.1(d) where the total treatment capacity has not been provided in the permit. In addition, Health and Safety Code section 25205.1(d) does not base the treatment capacity for the facility on the capacity indicated in the “draft” permit, but on the “total” treatment capacity provided in the actual permit. As explained above, DTSC has determined that the “total” treatment capacity provided in the permit should reflect the amount of used oil that will be treated or recycled monthly by the facility. DTSC declines to remove the special condition in Part V.22 from the permit.

Comment #II-7-4:

Lastly, the public notice stated that the draft permit did not clearly describe the facility’s category for fee purposes. Even though the size of our facility may have been incorrectly stated in the previous draft permit as “small storage or treatment facility”, we do not believe there was any confuse regarding whether it was a small or large facility in accordance with Health and Safety Code section 25205.1(d). Rather there may have been confusion regarding whether it was a small storage or a small treatment facility, and from the approved permit application and in the permit itself, it can be seen that we are a treatment facility. We do not believe this was a major source of confusion. We do not believe these minor errors (and we are only talking about 4 or 5 words(storage and treatment vs. treatment, and Notice of Exemption vs. Negative Declaration) should not have warranted convening new public comment period and delaying our project.

Response #II-7-4:

Part II, Paragraph 7, of the draft permit noticed during the first comment period stated: “The Facility is categorized as a medium storage and treatment facility pursuant to Health and Safety Code section 25205.1...” (underscore added.) This facility designation is a source of confusion because Health and Safety Code section 25205.1 does not have a size “medium” category. The categories available for both storage and treatment facilities are large, small, and mini. With the inclusion of the special condition in Part V.22, DTSC has determined that the facility is appropriately identified as a small treatment facility. These changes to the permit are substantive, and are not mere typographical changes. DTSC determined that the public should be given an opportunity to comment on these new changes to the draft permit.

Comment #II-7-5:

Is it DTSC policy that any errors or changes to the draft permit would require a new public comment period? We have examined previous DTSC permit decisions and found this not the case. For example, DTSC recently issued a Permit to Pacific Resources Recovery Services. The Record of Revisions shows 25 changes to that permit, yet there was no new public comment period for that permit.

Response #II-7-5:

The purpose of the public comment period is to give the public an opportunity to review permit conditions and DTSC's proposed decision. Where substantive changes are made to the initial draft permit that the public has not been given the opportunity to comment on, DTSC will re-open the public comment period. The reason is to alert interested parties that a substantive matter, such as a condition, has been added to the draft permit. In this instance, the addition of a condition limiting treatment or recycling at the facility to less than 1,000 tons a month is new and significant. DTSC's determination that the facility is properly designated a small treatment facility is based on this new condition. Principles of fairness and transparency warrant a new comment period to elicit the input of stakeholders on these changes. The changes in the Pacific Resources Recovery Services permit do not rise to the level of significance to require a re-opened comment period.