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## Department of Toxic Substances Control

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Arnold Schwarzenegger  
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### **Response to Comments April 16, 2007**

#### **Hazardous Waste Facility Closure Plan Approval**

**Ecology Control Industries, Inc., Fontana  
13738 Slover Avenue  
Fontana, California 92337  
EPA ID. NO. CAD982484933**

#### **Background**

##### **Public Participation Activities:**

Pursuant to California Code of Regulations, Title 22, section 66265.112 (d)(5), the Department of Toxic Substances Control (DTSC) issued a public notice on December 11, 2006 to receive public comments on the Draft Hazardous Waste Facility Closure Plan and Draft Negative Declaration for Ecology Control Industries, Inc., Fontana. Display advertisements were placed in The Sun English language newspaper on December 11, 2006, and the El Chicano Spanish language newspaper on December 14, 2006. Fact Sheets, in English and Spanish, with information about the project and public participation activities were mailed to approximately 1,100 addresses on the facility mailing list. Document repositories were set up at the Fontana Public Library at the DTSC Cal Center Office in Sacramento and at the DTSC Office in Glendale.

The 45-day public comment period ran from December 11, 2006, through January 26, 2007. Written comments concerning the project were received from Mr. Phillip Chandler after the closure of the public comment period.

##### **California Environmental Quality Act (CEQA):**

DTSC prepared an Initial Study, dated December 1, 2006, to evaluate potential environmental effects associated with the implementation of the Closure Plan. On the basis of the Initial Study, DTSC found that the proposed project would not have a significant effect on the environment and a Draft Negative Declaration was prepared.

### **Comments Received and Response to Comments**

One comment letter was received by email from Mr. Phillip Chandler on January 30, 2007. The 45-day public comment period closed on January 26, 2007. DTSC chose to have a 45-day public comment period, as opposed to the 30-day minimum requirement, due to the seasonal holiday period and to give all interested parties a reasonable opportunity to comment.

Given that the comments were received after the close of the public comment period DTSC is not obligated to formally respond. However, in good faith, and given the time that was spent preparing the comments, DTSC has opted to formally respond. In response to certain comments, DTSC has made a change the draft Closure Plan and has added a clarifying statement. The comments received are repeated below followed by the DTSC response.

#### **Comment 1 - EPA Identification Number:**

*COMMENTS ON DRAFT CLOSURE PLAN FOR ECOLOGY CONTROL INDUSTRIES; EPA ID NO CAD [NOT IN DECEMBER FACT SHEET—APPEARS TO BE TORRANCE NUMBER CAD 982 030 173]*

#### **Response to Comment 1:**

In the subject line of his letter the commenter noted that he could not find the Environmental Protection Agency (EPA) Identification Number for the facility and incorrectly assumed that the facility in question was ECI's Torrance facility. The EPA ID. NO. for the ECI Fontana facility was not listed on the fact sheet or the public notice – DTSC acknowledges this error. However, the ID. NO. was included on page one of the Initial Study.

The EPA ID. NO. for the ECI Fontana facility is CAD982484933.

#### **Comment 2 - On-line Access to Documents:**

*The Closure Plan project documents related to the proposed closure approval were not completely included on-line with the notice. Cited in the CEQA documents were the Closure Plan and a Soil Sampling Plan that should have been available to the public on-line. U.S. EPA recommends in FRL-7875-9 [Draft Final Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs], which was published in CFR Vol. 70, No. 42 [March 4, 2005] that its*

*recipients—agencies such as DTSC that receive funding from them—establish an on-line information repository as a means to enhance public participation. Mr. Watson Gin, the Deputy Director in charge of the Hazardous Waste Management Program (HWMP), has indicated his desire to have all permit-related documents available electronically for public access. The CEQA documents that were included on-line provide the only real insight into the proposed closure----but only so far. DTSC has again failed to provide adequate public notice Please re-notice and assure that all applicable information is available in and on-line repository.*

### **Response to Comment 2:**

The Federal guidelines recommend establishing an online information repository – DTSC did establish an online information repository and it contained the following documents:

- Fact sheet – English and Spanish
- Public notice – English and Spanish
- Initial Study
- Finding of De Minimis Impact
- Draft Negative Declaration

The information located in the online repository did provide very good background information on the proposed project. The documents online also clearly identified the information repositories where further information, such as the Closure Plan, could be viewed. The information repositories were located at the DTSC Cal Center (Sacramento) office, the DTSC Glendale office and at the Fontana Public Library. The Department is not required to post every document pertaining to a hazardous waste facility decision on its website.

In addition to the location of the information repositories, the information available online identified the DTSC project staff and their contact information. The public had the opportunity of contacting the project staff to request additional information electronically. As a demonstration of this, Mr. Lucas Paz, located in Richmond California, requested an electronic copy of the Closure Plan during the public comment period. DTSC staff scanned the Closure Plan and provided Mr. Paz the document in electronic form the same day.

DTSC does not accept the assertion of the commenter that the failure to post the document on the Departments website unduly restricted public access, or opportunity, to review the document. We therefore do not intend to re-notice the Closure Plan.

**Comment 3 - Constituents of Concern (COCs):**

*I couldn't find a definitive list of the various constituents-of-concern (COCs). Just stating that hydrocarbons and metals will be analyzed isn't sufficient. Doesn't title 22 have some requirement for the recitation of COCs? Isn't it technically responsible to cite them in the closure plan? How can a member of the public know precisely what COC could be present? My recollection is that COCs are everything that a facility might have used to could find its way into the waste management units. For example, gasoline has additives that include 1,2-DCA, MTBE, etc. There is no mention of additives as COCs.. Certainly, I don't see analytical protocols that cover these-----mostly because the fact sheet and CEQA documents are the only sources of information. Were such materials present at the facility during its history?*

**Response to Comment 3:**

The commenter correctly acknowledges that a list of COC's was not included in the Initial Study. However, the Closure Plan does include the list of species to be included in the sampling profile. The following paragraphs are taken directly from page six of the Soil Sampling Plan:

**2.6 Sample Analysis**

*In accordance with DTSC requirements, samples will be submitted to an Environmental Laboratory Accreditation Program (ELAP)-certified laboratory for analysis. Taking into account the GSU's specific requirements, ECI proposes to analyze all soil samples collected in the vicinity of the operations portion of the facility for the following: gasoline, diesel, and oil range petroleum hydrocarbons, CAM 17 metals, volatile aromatic hydrocarbons (benzene, toluene, ethylbenzene, and xylenes (BTEX), fuel oxygenates, volatile organic compounds, semi-volatile organic compounds, polynuclear aromatic hydrocarbons, and polychlorinated biphenols. Should pentachlorophenol (PCP) be detected in the semi-volatile organic compound analysis of a soil sample, that sample will additionally be analyzed for dioxins, furans, and pesticides.*

*All concrete core samples will be tested for the same analytes as the soil samples collected in the vicinity of the tank operations portion of the facility. The background soil samples will only be analyzed for CAM 17 metals.*

Mert t-butyl Ether (MtBE) is a fuel oxygenate, from a family of oxygen containing compounds that were used as fuel additives. Fuel oxygenates were included in the Soil Sampling Plan as illustrated above. To clarify, DSTC will require ECI to test for the following common fuel oxygenates:

- Methyl tertiary-butyl ether (MtBE),
- Tertiary-butyl alcohol (TBA),
- Di-isopropyl ether (DIPE),
- Ethyl tertiary-butyl ether (ETBE),
- Tertiary-amyl methyl ether (TAME);

DTSC does not believe there is justification for adding 1,2 – Dichloroethane, (1,2 – DCA), to the sampling profile.

#### **Comment 4 - Development of the List of COC's:**

*Please revise the Closure Plan to require that the COCs shall be all waste constituents, reaction products, and hazardous constituents that are reasonably expected to be in or derived from waste contained in the tanks brought to the site. The following shall also be considered COCs: (a) any constituent associated with the wastes which shall be listed in a table in the Closure Plan; (b) any constituents of other waste generated and stored by ECI, © constituents that have been observed in the Los Angeles County Sanitation Districts testing; and (d) any constituents found in previous investigations or monitoring in any medium whether liquid, solid or gaseous.*

#### **Response to Comment 4:**

DTSC believes that the COC's described in response to comment 3 above adequately address the COC's that are reasonably expected at the facility. DTSC does not understand the relevance of the reference to the Los Angeles County Sanitation District. As indicated on page one of the Initial Study, the ECI Fontana facility is located in San Bernardino County.

#### **Comment 5 - Background Closure Performance Standard:**

*The closure plan for this facility, included as part of the application, offers the principle closure performance standard as being "background".. The "background" standard, is to be determined with close to the right number of samples to be statistically valid. No explanation of the statistical approach is given in the electronic documents. However, please provide an explanation of how and why DTSC believes that petroleum*

*hydrocarbon constituents such as benzene and additives such as 1,2-DCA should be cleaned only to “background”? Please explain how the sampling locations will be chosen and vetted within the context of the nature of the ECI site. For example, will the historical uses and potentials for contamination be addressed for any sampling location selected for background? No protocols or methodology were provided in the electronic documents for such selection. Stating that “background” will be used but not providing a reasonable explanation for how this will be determined means that the closure performance standards are inadequate. Please explain what statistical approach will be used to develop background from the samples and justify.*

**Response to Comment 5:**

The background closure performance standard is only applicable to metals. It is standard practice to sample surrounding land, known not to be contaminated, for CAM 17 metals, and to use these values for the cleanup standard for metals at the site. DTSC does not believe it is appropriate to expect a facility to clean up a site to a higher standard than when the site was a green field’s site i.e. pre-development.

The background metals levels for the site will be determined by, (1) removing any obvious outlying data from the data set, and then (2) adding a substantial difference S, generated using the 95<sup>th</sup> percentile of the background data set, to the mean.

i.e. Background =  $M_b + S$ , and  $S = B_{95} - M_b$

Where:  $M_b$  = the mean of the background data set

$S$  = substantial difference

$B_{95}$  = the 95<sup>th</sup> percentile of the background data

Given the small size of the site, DTSC does not believe it is reasonable to expect ECI to generate the large data set that would be required to generate background levels based on alternative statistical means such as confidence intervals.

The clean up standard for organics at the site will be non-detect. Background data will not be collected for organics because they are not commonly naturally found in soil. If the cleanup levels based on non-detect (organics) and background (metals) cannot be met, the facility may submit a risk assessment that will provide a new cleanup level that do not pose a threat to human health or the environment.

**Comment 6 - Volatile Organic Compounds (VOCs) and Soil Pore Gas Analysis:**

*Please explain and justify why that with the likelihood of halogenated volatile organic compounds (VOCs) being stored in some of the tanks brought to the site that the closure plan lacks any soil-pore gas sampling? This appears to be the standard approach for such constituents and DTSC simply ignores it in this instance? Please add special conditions to the permit to require such soil vapor sampling in accordance with the protocols described in the 1997 revised Los Angeles Regional Water Quality Control Board (LARWQCB) Interim Guidance for Active Soil Gas Investigation and the joint 2003 DTSC and LARWQCB Supplemental Advisory. The revised Closure Plan should include at least a one-level baseline soil vapor survey to measure any soil-pore gas with provisions to expand laterally and vertically as necessary.*

**Response to Comment 6:**

DTSC believes that the response to comment 3 addresses the comment regarding testing for halogenated VOC's.

As a part of the Soil Sampling Plan, the facility will be testing for VOC's using U.S. EPA Method 8260. DTSC believes that the planned testing will achieve the goals of the Closure Plan i.e. to determine if VOC contamination is present and to characterize the extent of any contamination found. DTSC acknowledges that there is always more than one method of achieving a desired outcome. In the opinion of DTSC, requiring ECI to conduct soil vapor sampling, in addition to VOC analysis of soil samples, is unjustified.

**Comment 7 - VOC Sample Preservation:**

*Please add special conditions to the Closure Plan portion of the permit to have Boeing use the methanol and sodium bisulfate preservation portion of U.S. EPA Method 5035 for the VOC soil sampling that should be performed. Field preservation is preferable. The specific preservation protocols should be described in the revised Closure Plan.*

**Response to Comment 7:**

Provided that the VOC sampling is conducted in compliance with U.S. EPA Method 5035, DTSC does not see the need to add additional requirements. Also, please note that the facility in question is ECI Fontana, not Boeing.

**Comment 8 - Unified Soil Classification System:**

*Please add special conditions to the Closure Plan portion of the permit to have ECI log all borings using the Unified Soil Classification System designations, Munsell color chart designations, PID readings and other repeatable standardized notations required under the DTSC guidance, "Drilling, Coring, Sampling and Logging At Hazardous Substance Sites."*

**Response to Comment 8:**

The following paragraph is taken directly from page 5 of the Soil Sampling Plan.

***2.4 Geological/Lithological Soil Logging***

*All sample locations will be logged by a field geologist working under the direct supervision of a California Professional Geologist. Stratigraphic correlations will be noted where apparent. The original boring logs, indicating sample collection depths, lithologic descriptions and field observations will be presented in the investigation report.*

The Soil Sampling Plan clearly states that strata-graphic correlations will be noted where apparent. Also, given that the initial sampling will only be to a depth of two feet and there is gravel fill material on the site, variations in strata are not expected.

Therefore DTSC will not be adding the special conditions as requested.

**Comment 9 - Stainless Steel Sampling Sleeves:**

*Please add special conditions to the Closure Plan portion of the permit to have ECI use stainless steel sleeves rather than brass because of the metals, acids and caustics that may need to be considered part of the COCs.*

**Response to Comment 9:**

There is no evidence that acids or caustics have ever been used at the site; therefore, adding specific requirements related to them is not appropriate. Also, the following paragraph is taken directly from page 5 of the Soil Sampling Plan.

***2.5 Soil and Concrete Sampling***

*A truck-mounted, direct-push sampling rig equipped with a 2-foot long, 2-inch diameter core barrel sampler lined with clear acetate samples tubes will be used*

*to obtain continuous core of the soil to the desired depths at each sample location. Soil samples collected at 6 inches below grade and 2 feet below grade from each boring will be retained for laboratory analysis.*

The core barrel samples will be lined with acetate therefore the sample will never be in contact with the core barrel regardless of its material of construction.

Therefore DTSC will not be adding the special condition as requested.

**Comment 10 - Defining the Extent of Any Contamination:**

*Please add special conditions to the Closure Plan portion of the permit to have ECI include step-out and step-down provisions to the Closure Plan in case contamination is encountered in the initial sampling. The Closure Plan should address lateral and vertical extent of any contamination encountered. Please explain why 6 inches and two feet was selected as the sampling depths—the CEQA documents merely state that these are the depths.*

**Response to Comment 10:**

Page 23 of the Closure Plan states that if soil sampling indicates that contamination is present, then the facility will conduct follow-up testing to define the extent of the contamination. The sampling depths of 6 inches and 2 feet below grade were suggested by the facilities consultant that prepared the Soil Sampling Plan. DTSC is satisfied that the sample depths indicated adequately meet the objectives of the Closure Plan i.e. to identify if there is sub-surface contamination at the site. If the initial sampling at the site indicates that contamination is present, then testing at greater depth will be required to characterize the extent of the contamination. This is acknowledged on page 23 of the Closure Plan.

**Comment 11 - Sampling outside the Containment Areas:**

*Figure 2 of the Initial Study shows the proposed sampling points (each presumed to be for 6-inch and two-foot samples) and the 10 background samples. These all appear to be within containment areas. Samples must be obtained outside on the periphery of the containment as well because spillage often happens on the way in to the containments. For example, it appears that the loading/unloading berm is a 2 inch high/1.5-foot wide “bump” with unpaved areas to the north, east and west. There appear to be no samples proposed for the roll-off bins that sit outside the containment. These bins were used for rinse tank soils and residuals. Run-off from them could have gone onto the unpaved areas. Other roll-off bins sit outside the containment. It appears that DTSC has not*

*required an adequate sampling plan. It assumes that sampling is only necessary to test integrity of the containemnts—not the entire practice of loading and unloading and “operation” (which includes assuring that overflow of the 5.5 inch berms doesn’t occur during rainfall events. Given the order included on-line, this represents unwarranted assumptions that give rise to potential significant impacts from the proposed discretionary decision.*

**Response to Comment 11:**

DTSC acknowledges that operations at the site may have led to contamination outside the limits of the containment areas. The sampling plan will be modified to include sample locations adjacent to the containment areas. This will be a condition of the Closure Plan approval.

**Comment 12 - Sampling of Asphalt and / or Concrete:**

*Why isn’t DTSC addressing the inevitable spillage accumulation in the asphalt/concrete with a specific number of samples rather than “at selected locations”?*

**Response to Comment 12:**

Concrete core samples will be collected when the sample locations identified in Figure 2 of the Initial Study fall on a concrete paved surface. The facility will not be sampling the asphalt surface for hydrocarbons because the surface, by its nature, is derived from hydrocarbon based products. For this reason, we have asked the facility to sample from directly under the asphalt surface in order to determine if any contaminant has penetrated the surface. Also, DTSC stipulated in the Closure Plan conditional completeness determination dated December 6, 2006, that if the material below the asphalt surface was deemed to be contaminated that the asphalt surface would also be removed and disposed of as contaminated material.

**Comment 13 - Storm Water Run Off:**

*Has ECI provided an adequate map-----½ foot contour intervals—to show pattern of surface water run-off on the site? Please explain how DTSC has determined where run-off from the various areas where the tanks were stored may have gone and could have accumulated.*

**Response to Comment 13:**

ECI has not provided a contour map with half foot contour intervals. They did provide a wide angle contour map demonstrating that the topography in the area is generally very flat and that the site is not within the 100-year flood plain. A review of photographs of the site indicates that there is not more than half a foot of contour anywhere on the site.

The Permit ECI Fontana was operating under required that all contaminated tanks be stored on the containment areas. The containment areas were bermed and any effluent or liquid that collected in these areas was pumped to a holding tank, tested, and disposed of as appropriate. Roll-off bins outside the containment areas were lined with Visqueen. However, given all these controls it is still possible that some run-off could have occurred. DTSC is not aware of any stained areas or low points on the site. As indicated in response to comment 11, DTSC will require ECI to sample at selected locations off the containment areas. It is hoped that any run-off that has occurred will be apparent in these samples.

In addition to specifying additional fixed sample locations off the containment areas DTSC will leave open the location of one sample site. DTSC staff will conduct a “site walk” while providing field oversight of the Closure Plan implementation and will direct the location of the additional sample site at that time.

**Comment 14 - Constituents of Concern:**

*Since the sampling does not address all of the COCs, Section 7 the Initial Study is not accurate and needs to be revised. If DTSC fails to adequately investigate all COCs, there is a potentially significant impact.*

**Response to Comment 14:**

DTSC believes that the sampling plan does address all of the COC's. Please refer to the response to comment 3.

**Comment 15 - Non-compliance Order Issued to the Facility:**

*Since the Order included on-line appears to indicate that storage took place outside of the tank processing areas, Section 8 of the Initial Study requires revision. It states less-than-significant impact. Secondary containment doesn't help preclude run-off if the tanks are outside of it. Please explain the relationship of findings in the Order with respect to threat to surface water and ground water. If DTSC fails to adequately investigate, there is a potentially significant impact.*

**Response to Comment 15:**

DTSC is not aware of the order referred to by the commenter. Orders were issued to ECI on December 2003 and May 2006. The December 2003 Order did not deal with the storage of tanks outside the tank processing areas. The May 2006 Order, which dealt with the storage of tanks outside tank processing areas, was for the Richmond and Torrance facilities, and not the Fontana facility.

Therefore DTSC does not believe the Initial Study requires any revision.