

**Communities for a Better Environment
California Coalition Against Toxics
ProUno**

May 9, 2007

Via E-Mail and U.S. Mail

Watson Gin, Deputy Director
Hazardous Waste Management Program
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806
WGin@dtsc.ca.gov

Re: Petition for Review of Hazardous Waste Facility Permit for Industrial Services oil Company, Inc., 1700 South Soto Street, Los Angeles, California 90023

Dear Mr. Gin:

On March 5, 2007, Communities for a Better Environment ("CBE"), ProUno, and California Coalition Against Toxics ("CCAT") (collectively, "CBE") submitted a petition for review of the December 18, 2006 Final Hazardous Waste Facility Permit ("Permit") Decision and Final EIR for Industrial Services Oil Company, Inc. ("ISOCI"). The California Court of Appeal recently issued a decision that clarifies the failings of the ISOCI Final EIR and the importance of not issuing the Permit without remediating the EIR. CBE is writing to update its petition for DTSC's consideration in light of that decision -- *San Joaquin Raptor Rescue Center v. County of Merced* (April 10, 2007) 149 Cal.App.4th 645, 2007 Cal. App. LEXIS 516.

In *San Joaquin Raptor*, the Court of Appeal analyzed two points that are critical to the ISOCI decision. First, it considered a project description that failed to explain the full scope of operations increases. Second, it assessed a baseline description that failed to disclose whether it was based on recent activity levels.

Regarding project description, the Court held that an EIR is fundamentally flawed if an inadequate and misleading project description precludes informed decision-making and public participation. The Court adjudged the project description in the EIR at issue to be misleading because it indicated that no increases in mine production were being sought when the project included a substantial increase in mine production. *Id.* at *8-9. Finding that the "curtailed or shifting project description affected the EIR process" by carrying over into the impacts analysis, the Court concluded that it "failed to adequately apprise all interested parties of the true scope and magnitude of the Project." *Id.* at *10, 13.

As discussed at pages 13-14 of our Petition, the ISOCI fact sheet failed adequately to describe the project, omitting ISOCI's plans to accept hundreds of new waste codes and store up to 250,000 gallons of hazardous waste in rail cars without an adequate containment system. It is critically important that the fact sheet provide an accurate description of the proposed activities because it is the first document that the public views when deciding whether or not to seek further information about a facility. As the *San Joaquin Raptor* court noted, "only through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental costs, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives." *Id.* at *7 (citation omitted). The project descriptions in the fact sheet and Final EIR for ISOCI are misleading in their characterization of the nature, scope and magnitude of the activity being proposed, thereby precluding meaningful public participation.

The *San Joaquin Raptor* court also determined that the EIR at issue did not clearly identify assumptions made in the description of baseline environmental setting, which compounded the errors associated with the misleading project description and contributed to the EIR's inadequacy as an informational document. *See id.* at *50. Noting that data in an EIR must be presented in a manner calculated to adequately inform the public and decision-makers who may not be familiar with the details of the project, the Court emphasized that in a new EIR, "the baseline must not be obscured, but must be plainly identified." *Id.* at *17.

The description of baseline conditions in the Final EIR for ISOCI is vague, inaccurate, and legally inadequate, as discussed at pages 66-67 of our Petition. Among other things, the Final EIR improperly includes in its description of baseline conditions significant changes to the project site that occurred since publication of the 1995 Notice of Preparation, fails to identify all changes that have occurred at the project site since 1995, and fails to clearly distinguish between existing components of the facility and proposed components of the facility.

The defects in the project description and description of baseline conditions render the Final EIR for ISOCI inadequate as a matter of law because it falls far short of the standards articulated in the *San Joaquin Raptor* decision and hinders informed decision-making and public participation. As explained in our petition, the Final EIR must be decertified and a revised Draft EIR should be prepared and circulated. Therefore, CBE respectfully requests that DTSC grant the Petition, set a briefing schedule for the appeal pursuant to 22 CCR § 66271.18(c), stay the Notice of Determination, and refrain from issuing the Permit until the appellate issues identified by us are resolved favorably to CBE, ProUno and CCAT.

Very truly yours,

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

Jane Williams
**California Coalition
Against Toxics**

Felipe Aguirre
ProUno

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