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VIA EMAIL AND U.S. MAIL

Industrial Service Oil Company Appeal

Mohinder S. Sandhu, P.E., Chief
Standardized Permit and Corrective Action Branch
Department of Toxic Substances Control
8800 Cal Center Drive, MS R1-2
Sacramento, CA 95826

**Subject: Appeal to Comment 3-4, Permit No. 06-GLN-12
1700 South Soto Street, Los Angeles, CA
Adelante Eastside Redevelopment Project**

Dear Mr. Sandhu:

The Community Redevelopment Agency of the City of Los Angeles (CRA/LA) submits its comments on Appeal Comment 3-4 on the above referenced matter, which Industrial Service Oil Co., Inc. (ISOCI) presented to the State of California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) and which DTSC accepted for administrative review.

INTRODUCTION

The ISOCI Hazardous Waste Facility Permit, Permit No. 06-GLN-17, for Facility EPA ID No. CAD099452708 (Permit), currently states in Part V, subpart (2)u, as follows:

"The facility shall not begin construction of any proposed hazardous waste units until it obtains all permits required by all state and local regulatory agencies. Pursuant to California Health and Safety Code section 25199.3(a) the permit for the proposed units shall not become effective until the applicant is granted a local land use permit."

In its petition, ISOCI objects to the above-cited permit condition on three grounds:

- Jurisdiction. First, ISOCI contends that DTSC does not have the statutory jurisdiction to impose land use conditions in the Permit. (See, Order To Set Briefing Period for Petition for Review and Denial of Review (Order), p. 30:14-16.) This is incorrect. DTSC has the authority to impose the permit condition under California *Health & Safety Code* §25199.3(a)



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- Redundant Condition. Second, ISOCI contends that the “first part of the Special Condition” already states that ISOCI will not begin construction without the required permit and that the special condition is “sufficient to ensure that ISOCI will obtain land use permits as necessary and required by local laws and regulations.” (See, Order, p. 30:16-19.) In short, ISOCI contends that the second sentence of Part V, subpart (2)u of the Permit is redundant and, therefore, should be removed. The permit condition that ISOCI objects to is not redundant. The first part of the condition prohibits “construction of any proposed hazardous waste units” until the facility “obtains all permits.” The second part of the condition states that: “Pursuant to California *Health and Safety Code* Section 25199.3(a) the permit for the proposed units shall not become effective until the [ISOCI] is granted a local land use permit.” The second sentence of this condition becomes all the more important in light of ISOCI’s apparent view that it somehow will be able to operate under the Part B Permit without having to obtain a land use permit.
- Continued Right to Operate in Heavy Industrial Zone. Third, ISOCI contends that it is permitted by “right” to conduct “various existing and proposed activities” because it is located within an M3 “heavy industrial” zone. (See, Order, p. 30:20.) Whether or not ISOCI is permitted by right to operate an existing or expanded hazardous waste facility under the Los Angeles Municipal Code is a step beyond DTSC’s traditional jurisdiction. DTSC premised its denial of many permit comments on DTSC’s perception that the “permit appeal process [was] not the proper forum to raise CEQA issues”. (See, Order, p. 6:13-14.) If CEQA issues are beyond review in the permit appeal process, ISOCI’s right to operate and expand its operations under the Los Angeles Municipal Code, the Boyle Heights Community Plan, Adelante Eastside Redevelopment Plan and other land use regulations should likewise be beyond review. What ISOCI’s permit comment does reveal is an intent to avoid the required land use process and permits, further reinforcing the need to ensure that the second sentence of Part V, subpart (2)u remains in the Permit. ISOCI is legally required to obtain a new land use permit since the new Permit reflects a different and greatly expanded facility.

DTSC HAS STATUTORY GROUNDS FOR CONDITIONING THE PERMIT ON THE GRANTING OF A LOCAL LAND USE PERMIT

California *Health & Safety Code* §25199.3(a) explicitly states that “the state agency may provide that the permit [for a hazardous waste facility] shall not become effective until the applicant is granted a local land use permit.”

The statutory language in California *Health & Safety Code* §25199.3(a) plainly establishes that DTSC does in fact have the statutory authority to condition the Permit on the granting of a local land use permit. Further, the statutory language clearly indicates that DTSC’s authority extends to conditioning the entire permitted operations, and not just the permit for the “proposed units,” on the granting of a local land use permit to ISOCI



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Therefore, the Permit condition set forth in Part V, subpart (2)u is proper and must remain as a condition of the Permit.

ISOCI DOES NOT OBJECT TO THE PERMIT CONDITION THAT REQUIRES A LAND USE PERMIT AND OTHER SIMILAR REQUIREMENTS BUT BELIEVES THAT A REDUNDANT CONDITION IS UNNECESSARY

The fact that an important permit condition, like the event that triggers the effective date of a permit, is repeated in different contexts may appear redundant but there are times when redundancy plays an important function of clarifying and emphasizing an important permit condition. This is such a case.

ISOCI seeks to expand the operations of a hazardous waste facility in an area that, through careful land use planning, will be comprised of residential housing, consumer retail stores, movie theaters, and the like. ISOCI has no local land use permit. It argues that it is legally entitled to operate in the Boyle Heights community - which has been the focus of significant planning efforts and public/private investment - without a land use permit.

In this particular case, it is of the utmost importance that the Permit be clearly and plainly conditioned on the granting of a local land use permit for the entire permitted operation. The condition set forth in Part V, subpart (2)u should remain in the Permit, intact.¹

ISOCI'S "RIGHT" TO OPERATE IN THE BOYLE HEIGHTS AREA IS TO BE DETERMINED BY THE CITY OF LOS ANGELES, THE CRA/LA AND OTHERS, AND NOT BY DTSC

ISOCI contends that it is permitted by right to conduct "various existing and proposed activities" because it is located within an M3 "heavy industrial" zone.

ISOCI does not have a preordained "right" to operate within the Boyle Heights area for the reasons which have been briefed in detail in the Petition for Review of the CRA/LA, in the Petition for Review of City of Los Angeles Councilmember José Huizar, and in the Petitions for Review of other interested persons.² The arguments set forth in the Petitions for Review of the

¹ The specious nature of ISOCI's "DTSC has no jurisdiction" argument discussed above in Part II is highlighted by ISOCI's apparent high level of concern over what it argues is a redundant permit condition. ISOCI does not raise the "jurisdiction" issue with respect to the other conditions found in the "first part of the Special Condition." ISOCI acknowledges that the two allegedly redundant conditions impose similar conditions as those found in the objectional part of Part V, subpart 2(u). Therefore, one would have expected that ISOCI also would have asserted the "jurisdiction" objection on the other land use conditions found in the "first part" of the Permit condition. ISOCI raised no such objections. Instead of objecting to the other similar land use conditions in the "first part" of the Permit on jurisdictional grounds, ISOCI adopts and validates them. ISOCI then argues that the land use conditions in the "first part of the Special Condition" are "sufficient to ensure" that ISOCI will obtain the required permits, including a land use permit, and reiterating such requirement in Part V, subpart 2(u) is unnecessary.

² Specifically, DTSC is referred to (a) the CRA/LA's Petition for Review which is set forth in a letter dated March 2, 2007 from Julia Stewart and addressed to Watson Gin, Deputy Director, Hazardous Waste Management Program, DTSC Permit No. 06-GLN-12

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CRA/LA and of Councilmember José Huizar; are incorporated herein in their entirety through this reference.³

Furthermore, DTSC denied review of the Petition for Review of the CRA/LA on the grounds that the issues raised in the petition related to (among other things) the California Environmental Quality Act (CEQA, California *Public Resources Code* § 21000, et seq.) and the land use process. (See, e.g., Order, p. 6:21-27.) Although the CRA/LA disagrees with DTSC's decision to reject the CRA/LA's Petition for Review, DTSC's rationale also bars review of ISOCI Comment 3-4. Any evaluation of ISOCI's right to conduct existing and proposed activities at its site inevitably entails an analysis of CEQA and land use issues.

To summarize:

a. *The ISOCI Hazardous Waste Facility Is Incompatible with the Land Use Plans for the Area*

The City of Los Angeles and, in particular, the CRA/LA, have been entrusted with the responsibility of eliminating the physical, economic, social, environmental, health and safety concerns that are endemic to Boyle Heights due to the heavy industrial activities that have traditionally existed in the area.

In 1999, the Los Angeles City Council adopted Ordinance No. 172524 and, in doing so, adopted the Adelante Eastside Redevelopment Plan (Redevelopment Plan). The ISOCI property is located within the area covered by the Redevelopment Plan. In addition, the Boyle Heights Community Plan is being updated to address the redevelopment and revitalization of the area, transitioning land use patterns and development away from the types of expanded industrial uses that ISOCI proposes.

ISOCI's planned expansion stands in stark contrast to the CRA/LA's and the City's goals and objectives in the Project Area, which goals and objectives were approved and implemented at great government investment and with extensive public participation. Section 106 of the Redevelopment Plan states the following express general objectives for development in the area:

DTSC, PO Box 806, Sacramento, CA 95812-0806 and to Jose Kou, P.E., Chief, Southern California Permitting and Corrective Action Branch, DTSC, 1011 North Grandview Avenue, Glendale, CA 91201, and (b) the Petition of Review of Councilmember José Huizar which is set forth in a March 5, 2007 letter to Watson Gin, Deputy Director, Hazardous Waste Management Program, DTSC, PO Box 806, Sacramento, CA 95812-0806 and to Jose Kou, P.E., Chief, Southern California Permitting and Corrective Action Branch, DTSC, 1011 North Grandview Avenue, Glendale, CA 91201.

³ Furthermore, this issue and related issues will be adjudicated in a case styled *Community Redevelopment Agency of the City of Los Angeles v California Department of Toxic Substances Control, et al.*, LASC Case No. BS111277.

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- Improve the quality of the environment, promote a positive image for the area, and to provide a safe and secure environment by developing safeguards against such items as noise, air pollution and other environmental hazards.
- Promote the development of sound residential neighborhoods that contain sensitive mixed-use and in-fill housing projects. (In this regard, one project known as the Olympic/Soto Mixed-Use development, which will be located within 850 feet of the Property, calls for the construction of 750 new residential units.)
- Increase the supply and improve the quality of commercial retail shopping opportunities in the area. (The Olympic/Soto Mixed-Use development proposes to add approximately 575,000 square feet of such retail space.)
- Develop an industrial environment that positively relates to the adjacent land uses. (The Part B permit, if approved in its current form, would permit ISOCI to store up to 250,000 gallons of hazardous waste in railcars at the Property for up to one year, among other things. (See, Permit, Part II.5, Rail Spur.) It is an understatement to state that ISOCI's plans for the Property are incompatible with an approved redevelopment plan that calls for residential housing, retail space, movie theaters, and the like.

Based on the foregoing, any assessment of ISOCI's rights to operate under the Permit will require an analysis of issues that DTSC has stated are beyond its review. If there is a project ideally suited for review under the Tanner Act, the ISOCI expansion is it.

b. ISOCI's "Rights" Will be Decided Through the Requirements of the Tanner Act

As reflected in the Tanner Act, the California legislature has found and declared that a scattered approach to issuing permits for hazardous waste facilities is *per se* inadequate:

"The approval of hazardous waste facilities is not currently a coordinated process. The failure to coordinate the issuance of multiple permits, licenses, land use approvals, and other types of authorizations causes lengthy and costly delays. The end result of the process cannot be predicted, with any degree of certainty, by either the proponent of a project to site and construct a facility or by the concerned public."

(California Health & Safety Code §25199(a)(2).)

The California legislature further declared and found that a piecemeal approach to approving hazardous waste facilities denies the public the important right to voice concerns and project proponents the opportunity to take those concerns into consideration:

"Present procedures for approving hazardous waste facilities do not provide meaningful opportunities for public involvement and are not

suitably structured to allow the public to make its concerns known and to cause these concerns to be taken into consideration.”
(California Health & Safety Code §25199(a)(3).)

Under the Tanner Act, the affected local agency appoints a seven-member local assessment committee to serve in an advisory capacity. (California Health & Safety Code §25199.7(d).) The seven members of this committee are able to provide a much broader and thoughtful perspective than that offered by a single purpose or narrow focus agency like DTSC.

Accordingly, based on DTSC’s own rationale, the decision as to whether ISOCI has a “right” to conduct “various existing and proposed activities” is a question that is beyond the jurisdiction of DTSC.

c. ISOCI’s “Right” Will be Determined Pursuant to a Proper and Comprehensive CEQA Review

CEQA recognizes that completing a project review within a reasonable time plays an important part (a) in obtaining an accurate and fair evaluation of the impacts that a project will have on an area, and (b) in obtaining full and meaningful public participation in the process. Thus, §15082 of the CEQA Guidelines states that immediately after it is determined that an EIR is required, the lead agency is required to send notices to responsible agencies and others, and the lead agency may immediately begin work on the draft EIR. Within thirty days of receiving the Notice of Preparation, the parties that received the Notice of Preparation are required to provide their comments on the scope and content of the environmental information which is to be included in the draft EIR. (*Id.*)

The importance of an appropriate and comprehensive review under CEQA and the Tanner Act is further highlighted by the fact that in the absence of a “substantial” change in the ISOCI Part B application and the concomitant expansion of the facility, other interested persons could object to any subsequent or supplemental EIR in connection with ISOCI’s proposed expansion. (See, e.g., 22 CCR §21166.)

Based on the foregoing, until the appropriate entity conducts a proper and thorough environmental review, a decision concerning ISOCI’s “rights” cannot be rendered.

d. ISOCI’s “Right” Will be Determined in a Manner that is Consistent with the Goals and Objectives of Environmental Justice

The Environmental Protection Agency defines “environmental justice” as “the **fair treatment and meaningful involvement** of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. Fair treatment means that **no group of people, including a racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal or commercial**

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operations, or the execution of federal, state, local and tribal programs and policies. Meaningful involvement means that: (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public contribution can influence the regulatory agency's decision; (3) the concerns of all participants will be considered in the decision making process; and (4) the decision maker's seek out and facilitate the involvement of those potentially affected."

Under this definition, "environmental justice" is achieved when everyone – regardless of race, culture or income – enjoys the same degree of participation in the decision making process and, ultimately, enjoys the same degree of environmental protection and equal access to the decision making process to reach and preserve a healthy environment.

These environmental justice concerns also must be taken into account in any evaluation of ISOCI's right to a land use permit or other governmental approval, as well as its right to operate under the Permit.

CONCLUSION

For the foregoing reasons, the CRA/LA requests that DTSC reject the objections that ISOCI raises in Comment 3-4 and that DTSC retain the condition in Part V, subpart (2)u of the Permit.

The CRA/LA's concerns and comments on this matter are shared by elected local leaders and responsible entities of the City of Los Angeles. The Office of Councilmember Jose Huizar, together with the City's Department of Building and Safety and the Department of City Planning have submitted comment letters, under separate cover, which address the concerns discussed herein.

In the event ISOCI or anyone else who files comments in support of ISOCI Comment 3-4 raises new or different issues than those that were originally presented by ISOCI, the CRA/LA reserves the right to submit additional comments in connection with such new or different issues. Furthermore, in the event DTSC provides an opportunity for oral argument concerning Comment 3-4, the CRA/LA hereby requests notice of such hearing and requests the opportunity to be heard.

Sincerely,



Julia Stewart
Project Planner



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cc: Jessica Wethington McLean, Deputy for Planning & Economic Development, Office of Councilmember Jose Hjuizar (CD 14)
Michael LoGrande, Chief Zoning Administrator, Department of City Planning
Hector Buitrago, Assistant General Manager, Department of Building and Safety
Steve Valenzuela, CRA/LA Regional Administrator
Curtis S. Kidder, Assistant City Attorney & CRA/LA General Counsel
Patrick Rendon, Esq., CRA/LA Special Outside Counsel
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