



Linda S. Adams
Secretary for
Environmental Protection



Department of Toxic Substances Control

Maziar Movassaghi,
Acting Director
700 Heinz Avenue
Berkeley, California 94710-2721



Arnold Schwarzenegger
Governor

**RESPONSE TO COMMENTS ON
DRAFT MODIFICATION TO THE
STANDARDIZED HAZARDOUS WASTE, SERIES B FACILITY PERMIT
FOR
J&B REFINING DBA J&B ENTERPRISES , SANTA CLARA, CALIFORNIA**

April 8, 2009

INTRODUCTION

On December 1, 2008, the Department of Toxics Substances Control (DTSC) issued public notice to accept public comments on the proposed modification to the Standardized Hazardous Waste Permit and Notice of Exemption for the treatment and storage of hazardous waste at J&B Enterprises (also known as J&B Refining), located at 1650 Russell Avenue, in Santa Clara. The 45-day public comment period on the draft modified permit ran from December 1, 2008 to January 16, 2009. The public was informed of the public comment period by a display advertisement in the San Jose Mercury News on December 1, 2008. In addition, copies of a fact sheet were mailed to persons on the facility mailing list on November 26, 2008. The public comment period ended on January 16, 2009.

DTSC received a set of comments during the public comment period from Mr. Phil Chandler. DTSC's response to comments received during the public comment period is as follows. The response to comments will be provided to the commenter and a copy will also be placed in information repositories for this project.

BACKGROUND

J&B Enterprises is located on a parcel of land approximately 62,000 square feet owned by Challenger LLC. J&B Enterprises is located in an industrially zoned area of the City of Santa Clara. DTSC issued a Standardized Hazardous Waste Facility Permit (Permit) to the Facility on January 7, 2002 with an expiration date of January 6, 2012.

DTSC determined that there was a discrepancy in the Permit and the Operation Plan. The proposed modification to the Permit revises the description of the permitted units, their waste streams and federal and States waste codes so that they are consistent with the Operation Plan. DTSC will file the Notice of Exemption with the State Office of Planning and Research.

Commenter- Philip B. Chandler

Comment # 1

The permit is described as consisting of "Attachment A", which is 49 pages long, a standardized permit application, dated December 2006, which was "... hereby made part of this permit by reference." Only the revised "Attachment A" is provided to the public as part of the review documents. DTSC consistently fails to electronically deliver, as part of its permitting practice, the full permit. Please explain the logic and transparency of electronically providing only part of the permit for public review but requiring that the actual details only be available in the walk-in in repositories.

Response # 1

State laws, regulations and policies do not require DTSC to post on its website all documents pertaining to hazardous waste facility permit decisions. As a matter of practice, DTSC does post many of the key documents relating to a pending or final permit decision on its website (e.g. fact sheets, public notices, draft and final permits). The purpose is to provide the public with online access to as many documents in the administrative record as practically possible. Generally, these documents are posted on the website to inform the public about the status of the permit decision (e.g. public comment period and public hearing dates), provide basic background information concerning the facility and the pending permit decision, and provide information regarding the location(s) where interested parties may view further details concerned the permit decision. Generally, DTSC does not post on its website the numerous documents, some of which are quite voluminous (e.g. permit applications and their revised versions), that are incorporated into the permit by reference or considered in making a permit decision. All of these documents, however, are available for public review in the DTSC's regional office and the public repositories identified during the public comment period. In this case, the documents are located at DTSC's regional office at 700 Heinz Avenue, Berkeley, California, 94710 and the City of Santa Clara, Mission Branch Library at 1098 Lexington Avenue, Santa Clara, California 95050. The documents posted on DTSC's website for a specific permit decision vary on a case-by-case basis and are based upon a variety of factors including, but not limited to, the amount of public interest, number of documents, and document size.

Comment # 2

*Although the permit modification does not address corrective action, has corrective action financial assurance been established for the facility in accordance with the intent of Health and Safety Code (H&SC) 25200.10(b)? It is widely known that DTSC fails to comply with this statute, allowing permit applicants to defer the establishment of assurances of financial responsibility for corrective action at facilities. The usual means of deferral is through an enforcement order such as is cited in this draft permit. H&SC requires that, **“When corrective action cannot be completed prior to issuance of the permit, the permit shall contain schedules of compliance for corrective action and assurances of financial responsibility for completing the corrective action.”** [H&SC 25200.10(b)] Title 22 states **“That the permit or order [emphasis added] will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.”** [Title 22 CCR 66264.101(b)] Currently DTSC fails to require assurance of corrective action financial responsibility in the permits that it issues. Has it failed again to require such **assurances of financial responsibility** for corrective action?*

Response # 2

As the commenter pointed out, Health and Safety Code section 25200.10(b) provides that “when corrective action cannot be completed prior to issuance of the permit, the permit shall contain schedules of compliance for corrective action and assurances of financial responsibility for completing the corrective action.” Since corrective action is not currently necessary at this Facility, the statutory requirement for financial assurance for corrective action is not applicable.

In addition, the permit conditions regarding corrective actions were not modified in this permit modification. Pursuant to California Code of Regulations, title 22, section 66270.41, when a permit is modified, only the conditions subject to modification are reopened for comments.

DTSC is in compliance with the statutory and regulatory requirements for financial assurance for corrective action.

Comment # 3

The Part I.8 of the Markup version shows a closure cost estimate in 2001 dollars “...as approved by DTSC on July 16, 2001...” Please explain why the permit is being modified to include an eight year old cost estimate? Why isn’t there a more recent cost estimate? Has the 2001 number been adjusted for inflation over the last eight years? Is this estimate done by DTSC or was it done by the Facility? Did the estimate include any contingency for concrete removal? For soil

removal? For off-site effects of the furnace --- such as at some of the other furnace regulated by DTSC? Given an acid/water wash unit and a waste water treatment system, what provisions are there in the closure plan for assuring groundwater has not been impacted by the facility operations?

Response # 3

DTSC has reviewed the most recent closure cost estimate and agrees that the updated cost estimate should be included in the modified permit. DTSC will include the most recent closure cost estimate in the modified permit.

Comment # 4

Please explain why the actual cost estimate is not included among the documents available for review?

Response # 4

The closure cost estimate was not modified in this permit modification. Pursuant to California Code of Regulations, title 22, section 66270.41, when a permit is modified, only the conditions subject to modification are reopened for comments. DTSC added the information regarding the closure cost estimate in the modified permit on its own initiative.

Please also see Response # 1 regarding documents available for public review.

Comment # 5

Are there contingent post-closure care requirements in the closure plan? Are these funded?

Response # 5

The closure plan was not modified in this permit modification. Pursuant to California Code of Regulations, title 22, section 66270.41, when a permit is modified, only the conditions subject to modification are reopened for comments.

Comment # 6

Again, it is understood that the Corrective Action in Part IV, is not being addressed in this modification, but I would request that you explain on what basis the Phase I environmental checklist prepared for the Facility was used as the basis for determining that no further investigation was necessary? Has any investigation been done? Did DTSC independently evaluate each of the units to determine potential for release, e.g. the waste water treatment system? Are there any below-grade sumps or below-grade piping as part of the units in Part

that would handle the waste streams added in the Markup version for units 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10? If so, how does this fit with the notion that there is no opportunity for corrective action issues to arise from these units? Similarly, if there is potential for such units to leak below where the inspections occur, is the appropriate investigation work included in the cost estimate?

Response # 6

Pursuant to Health and Safety Code section 25201.6(i), DTSC determined on the basis of the Phase I Environmental Assessment conducted by the Permittee that no further investigation was necessary at the Facility.

Please also see Response # 2.