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### Response to Comments for TP Industrial, Inc.

TP Industrial, Inc (TPI) is requesting the Department of Toxic Substances Control (DTSC) to renew its post-closure permit which will allow the facility to continue groundwater monitoring, maintenance of four hazardous waste management units that were closed with waste in place, and corrective action under a corrective action consent agreement.

DTSC published a public notice for the hazardous waste facility post-closure permit (Draft Permit) renewal in the Daily Breeze on April 16, 2010, to announce the start of a 45-day public comment period to solicit comments on the Draft Permit. Copies of a Fact Sheet were mailed to the facility Mailing List. A paid public notice announcing the public comment period was aired on local radio station 104.3 MY FM. The public comment period ended on June 2, 2010.

DTSC received three written comment letters. This Response to Comments responds to the comments received during the public comment period. DTSC's response to the written comment is as follows:

#### 1. Comment by Jeffrey Smith

- 1.1 *Part II, 6 - Facility History - 9<sup>th</sup> paragraph: DTSC removed TPI's proposal to change this section to fully describe the very low soil concentrations that remain beneath Unit #2, the three-stage clarifier that was removed from the site in 2004. Soil samples were collected within the tank and piping excavation of the former wastewater clarifier location after removal. Minor concentrations observed at the clarifier soil interface removed during excavation represented the extent of VOCs that either leached through the clarifier or migrated from the surface along the sidewalls of the clarifier. Although the clarifier contents contained elevated concentrations of VOCs, the soil directly beneath the clarifier showed very low concentrations of VOC's. In fact, the last sentence in the DTSC letter of March 2, 2005 states, "The laboratory reports from the last samples indicated that the immediate contamination had been removed." Based on the soil sampling data*

*presented in the Clarifier Closure Report (MWH, 2004), the DTSC issued a concurrence letter regarding the Clarifier Removal Report dated March 2, 2005 and in association with broader site investigations issued a No Further Requirements letter for the Shallow Vadose Zone throughout the site on March 7, 2006. Copies of both letters are attached for reference. TPI does not feel that DTSCs' statement comports with the DTSCs' prior letters. Therefore please add back in TPI's language.*

#### Response to Comment 1.1

DTSC reviewed the two attached letters and added the following sentences to the end of the paragraph:

*“On March 2, 2005, DTSC issued a letter concurring that the immediate contamination around the unit had been removed. DTSC also issued a letter on March 7, 2006 stating that no additional corrective measures for the shallow vadose zone were anticipated.”*

- 1.2. *Part III 6 - Post Closure: TPI requests that DTSC delete the added language about the 30 year period from 2009 to 2039. TPI states again, as it has in the past, that the Post Closure Period at least started by February 1993 when DTSC certified the facility closed and so stated in a letter. TPI does not want to sign a permit that it in any way agrees with the DTSC, as stated in this Permit, that the 30 year period only started in 2009.*

#### Response to Comment 1.2

TPI has not completed the groundwater investigation and remediation at the facility; therefore, groundwater monitoring should continue to evaluate the vertical and lateral migration of constituents of concern from the soil. Based on this information, DTSC determines that an extended post-closure care period is applicable to the site until TPI demonstrates that the site no longer poses risk to human health and the environment as specified in Title 22, California Code of Regulations, section 66264.117(b)(2)(B).

- 1.3. *Part IV, Permitted Units and Activities -1 st paragraph. DTSC removed TPI's proposed change at the end of the paragraph that read: "Various activities associated with the permit requirements such as sampling and monitoring frequency and constituents of concern can be modified as outlined in the Approved Application without permit modification." The same issue is addressed in Part V Special Condition 3, where the DTSC has added a special condition that references the procedures required to change the environmental monitoring program such as the number of wells, analytes, and sampling frequency per the*

*application but reiterates their right to possibly require a permit modification to implement requested changes in the monitoring program..*

Response to Comment 1.3

Please note that Part IV is used to describe the permitted units and activities; therefore, a statement regarding the determination of a permit modification in Part IV of the Permit is not appropriate.

With regards to the Special Condition 3 in Part V, California Code of Regulations, title 22, section 66270.41 requires DTSC to determine whether causes for modification exist for any proposal submitted by TPI. The condition is consistent with the regulation.

- 1.4 *Part V new 3: TPI believes that no permit modification is required as stated above and it should not be here either.*

Response to Comment 1.4

See Response to Comment 1.3.

- 1.5. *Close examination of the administrative record for this project shows that TPI has been extremely responsive to and cooperative with the DTSC regarding nearly 25 years of active and on-going site investigation, characterization, and remediation. When the administrative process becomes overly burdensome, much time and money is wasted on efforts that do not focus on cleaning up the site. The process to move the project to this point where a permit renewal package has been issued for public comment required excessive effort and cost to both the DTSC and TPI and over 6 years to complete. As the economy continues to tighten within the State budget and private industry alike, it's clear that we just cannot afford to waste effort and money on administrative processes that do not produce any measurable benefit. TPI therefore reiterates the need to be able to modify the sampling and monitoring program quickly and efficiently to best align with the corrective action process and that this be accomplished with written approval of a monitoring program modification by the DTSC but not require a Post-Closure Permit modification to implement.*

*TPI sincerely appreciates the efforts of you and your team in facilitating this permit renewal process and respectfully requests that these comments be considered in the final draft process before the: permit is made final*

### Response to Comment 1.5

Comment noted. DTSC has been working with TPI to reduce the administrative cost and efforts on the permitting process. DTSC has approved a permit application which outlined the decision criteria that allows TPI to follow different groundwater sampling and monitoring strategies based on several assumptions for the groundwater data results. The Permit Special Condition 3 in Part V of the Permit is to ensure that the public is notified if causes for the permit modifications exist as required by the regulation (see Response to Comment 1.4).

Please note that the permit modification applies only to the groundwater monitoring activities related to the permitted units if the causes for the modification exist. The permit modification is not needed for any changes proposed for the corrective action.

## **2. Comment by Billie R. Davis**

- 2.1. *Thank you for the Fact Sheet Information. I have questions...How long do you anticipate the T P Industries, Inc. facility to remain under this closure for environmental clean-up?*

### Response to Comment 2.1.

The monitoring is required until the facility can demonstrate that the contamination beneath the facility no longer poses any risk to human health or the environment. The permit requires 30 years of post-closure monitoring; however, this period can be shortened or extended based on the monitoring results submitted by TPI.

- 2.2. *Is this present cover sufficient enough protection and maintenance for this hazardous waste? Noticing from some of the prior inspections, the violations cited had a couple of reputations [sic] in not monitoring and maintains [sic] this area. I hope this has changed, and continues to do for the good.*

### Response to Comment 2.2

Yes, the present cover provides sufficient protection to the on-site workers since the shallow soil vapor (up to 25 feet) has been removed and TPI continues to operate the remediation system to remove the soil vapor at the deeper depths.

In addition, DTSC continues to routinely inspect the facility to ensure the facility is maintained and monitored for human health protection.

Please note that all violations have already been corrected.

- 2.3. *As a resident of the community, I am deeply concerned for many reasons, Health comes first. When we breathe polluted air, the impurities often remain in the lungs. These impurities can worsen such respiratory ailments as asthma and bronchitis. I am aware of this, because I am an asthmatic and bronchitis patient. Where do we go from here? May I please have a copy of the comments and responses?*

Response to Comment 2.3

DTSC shares your concern regarding human health. DTSC prepared a Notice of Exemption which determined that the renewal of the permit will not cause significant impact to human health and the environment. With the renewal of the permit, TPI is required to continue its groundwater monitoring and maintain the cover in good condition for 30 years or until the facility demonstrates that it no longer poses risk to human health.

3. Comment by Mr. Philip B. Chandler

*The following comments represent some of my concerns about the draft Post-closure Permit Renewal and CEQA Notice of Exemption (NOE) for TP Industrial Inc. (TPI):*

- 3.1. *DRAFT POST-CLOSURE PERMIT, PART II DESCRIPTION OF THE FACILITY AND OWNERSHIP*

5. DESCRIPTION OF FACILITY OPERATIONS

*Please explain why all of the former RCRA units are not included with respect to post-closure care. How does DTSC know that none of the other “seven” units contributed to the “smear zone” and the groundwater contamination since DTSC allowed TPI to operate its soil vapor extraction system for over 15 years before addressing the slipshod issue of closure? I request that all former units be included in the post-closure requirements unless---per regulations---TPI can definitively demonstrate that pre-SVE conditions [sic]*

Response to Comment 3.1

TPI demonstrated the clean closure of seven hazardous waste management units in a report submitted in 2008. DTSC reviewed the report and concur with the demonstration in November 2008. As a result, only four (4) hazardous waste management units are subject to post-closure.

3.2. *DRAFT POST-CLOSURE PERMIT, PART II DESCRIPTION OF THE FACILITY AND OWNERSHIP*

6. FACILITY HISTORY

*DTSC states that it acknowledged that the Facility was closed. How does a whole Facility close with waste in place? Aren't individual hazardous waste management units subject to closure---not facilities? How was a final cover installed over the entire facility? Isn't some of the concrete still original material--like the building floor?*

Response to Comment 3.2

The decision that the Facility was closed with waste in place is not within the scope of this post-closure permit renewal. The scope of this project is limited to the renewal of a post-closure permit. The detailed information regarding the closure activities conducted in 1994 is available at DTSC Public Record Office in Chatsworth.

3.3 *DRAFT POST-CLOSURE PERMIT, PART II DESCRIPTION OF THE FACILITY AND OWNERSHIP*

6. FACILITY HISTORY

*DTSC fails to mention that the 1994 post-closure permit included very detailed corrective action components that it has [sic] now removed from the proposed renewal. This is a major environmental decision and is passed off as negligible.*

Response to Comment 3.3.

DTSC disagrees with the comment. DTSC noted in Part II.6 of the permit that (1) a hazardous waste facility post-closure permit was issued in 1994 requiring corrective action and (2) a corrective action consent agreement was signed to continue the corrective action under this permit renewal. The change was also noted in the Notice of Exemption.

3.4. *DRAFT POST-CLOSURE PERMIT, PART II DESCRIPTION OF THE FACILITY AND OWNERSHIP*

6. FACILITY HISTORY

*Please explain why Mr. Smith's failure to address ownership changes in the appropriate and timely fashion required by statute and regulation were [sic]*

*simply passed over by DTSC without enforcement action.*

#### Response to Comment 3.4

Normally, DTSC works with the Facility to comply with the regulations if the violations are not significant. Enforcement actions are needed only for significant violations classified as Class 1 violations. The ownership change is not a Class 1 violation and TPI was instructed to work with DTSC to correct the ownership change violation. TPI had already submitted the ownership change information and it is included in the Permit.

### 3.5 *DRAFT POST-CLOSURE PERMIT, PART II DESCRIPTION OF THE FACILITY AND OWNERSHIP*

#### 6. FACILITY HISTORY

*Why did DTSC wait nearly 20 years to properly address closure? How does this delay mesh with the regulatory requirements regarding closure timing? Why wasn't enforcement involved with Mr. Smith on this issue before 2008? Why aren't these late-blooming closure documents available in Envirostor? DTSC is anything but transparent here. Please make all of the closure documents available on the public site and re-notice this draft permit. Note, that DTSC appears to have nothing related to this Permit available in Envirostor. Please explain this lack of transparency. Again, make the materials available---implement the former Director's mandate for transparency—and re-notice this Permit.*

#### Response to Comment 3.5

DTSC disagrees with the statement that DTSC waited nearly 20 years to properly address closure. The closure certification for hazardous waste management units was properly acknowledged by DTSC in 1993.

DTSC also disagreed with the statement that nothing related to this permit was available in EnviroStor. All pertinent documents related to permit renewal (draft permit, notice of exemption, notice of deficiencies, Part B Application and factsheet) were available at DTSC's EnviroStor.

Members of the public also have access to the pertinent documents at the repositories identified by DTSC in the public notice. The notice of the public comment period for the draft permit decision, which is posted on the website, provided the public with information as to where these documents were available for review.

Please note that the closure of hazardous waste management units is not within the scope of this permit renewal. The closure related documents are available at DTSC's Public Record Office in Chatsworth.

Re-noticing of this draft permit is not necessary since DTSC's has made all pertinent documents and information available for public review.

3.6 *DRAFT POST-CLOSURE PERMIT, PART II DESCRIPTION OF THE FACILITY AND OWNERSHIP*

6. FACILITY HISTORY

*DTSC states proudly that a corrective action consent agreement that has no enforceability is being substituted for the specific and very enforceable permit conditions. Please explain how this is an improvement for the environment---and how DTSC has the nerve to utilize a Notice of Exemption (NOE) to cover its weakening of the environmental protections offered by the original post-closure permit. Please explain how the corrective action regulations---yes I know that there are none---provide the assurance of financial responsibility (AFR) that is required by the post-closure regulations for the elements that DTSC removed from the original permit. Please explain how the post-closure mechanisms---are regulated by the CUPA. Does the CUPA require AFR under its permit-by-rule (PBR)?*

Response to Comment 3.6

The process can be improved since the agreement, which outlines a corrective action process, was agreed and signed by TPI. As the commenter pointed out in his comment, DTSC uses a corrective action consent agreement, which is an order on consent, to implement any required corrective action at a facility. DTSC's corrective action consent agreement model complies with the requirements of California Code of Regulations, title 22, section 66270.33. Conditions and the schedule for compliance in a consent agreement are as enforceable as conditions in a permit or an enforcement order. The corrective action activities required by a consent agreement, including the facility investigation and remedy selection phases, are subject to the California Environmental Quality Act and DTSC's public participation process. The signed consent agreements are public records and are posted on DTSC's website at [www.dtsc.ca.gov](http://www.dtsc.ca.gov).

DTSC disagrees with the statement that DTSC utilized a Notice of Exemption (NOE) to cover its “weakening of the environmental protections offered by the original post-closure permit.” The use of a Notice of Exemption for the project that has no potential to cause significant changes to the environment complies with the General Rule specified in California Code of Regulations, title 14, division 6, chapter 3, section 15061(b)(3).

The assurance of financial responsibility for the soil vapor remediation system is covered by Permit-by-Rule which requires a financial assurance mechanism for closure of authorized units if the closure cost is more than \$10,000.00. If the closure cost estimate is less than \$10,000.00, a financial assurance mechanism is not required. However, a signed statement according to California Code of Regulations, title 22, section 66270.11 certifying that the PBR facility has sufficient financial resources to meet the closure cost is required.

The closure cost estimate for the soil vapor extraction system is above \$100,000.00 and a financial assurance mechanism was submitted to the Certified Unified Program Agencies (CUPA).

3.7 *DRAFT POST-CLOSURE PERMIT, PART II DESCRIPTION OF THE FACILITY AND OWNERSHIP*

6. FACILITY HISTORY

*DTSC indicates that the post-closure period started with issuance of this permit---  
-what about the 1994 permit?*

Response to Comment 3.7

See Response to Comment 1.2.

3.8 *DRAFT POST-CLOSURE PERMIT, PART III GENERAL CONDITIONS*

1. PERMIT APPLICATION DOCUMENTS

*Please explain how many revisions and NODs were required. Please explain when the first application was submitted. Did DTSC deliberately avoid issuing NODs to avoid triggering of initiation of permit denial as required by the regulations and statutes after a ste [sic.] of NODs?*

Response to Comment 3.8.

The first application was submitted to DTSC in 2004 and DTSC issued three (3)

notices of deficiencies (NODs). A complete Part B Application was received after the third NOD.

3.9 *DRAFT POST-CLOSURE PERMIT, PART III GENERAL CONDITIONS*

1. PERMIT APPLICATION DOCUMENTS

*DTSC states that the application is made part of this permit by reference. Isn't the application in effect the permit---since DTSC now routinely hides all of the important and substantive information in the application? Specifically, why isn't the bulk of the permit---this application---available as part of the noticed documentation? DTSC has failed again to properly provide the complete "permit" for public review. Please re-notice the entire permit as required by regulation and statute.*

Response to Comment 3.9

Part III.1 of the Permit clearly states that the Approved Application is made a part of the Permit by reference. DTSC has made the Approved Application, as well as the draft permit, available for review and comment during the public comment to ensure that the public has access to all relevant information that is included in the permit making decision. The draft Notice of Exemption was also available for review. Members of the public have access to the documents at the repositories identified by DTSC in the public notice. The notice of the public comment period for the draft permit decision, which is posted on the DTSC's website, provided the public with information as to where these documents were available for review. DTSC did not hide any information and has properly provided the complete permit decision documents for public review.

Please note that the incorporation of documents by reference is a common practice, and is specifically acknowledged in California Code of Regulations, title 22, section 66270.32(e), as a legitimate method in constructing hazardous waste facility permits.

Re-notice is not needed since both the Approved Application and the draft Permit were made available to the public.

3.10 *DRAFT POST-CLOSURE PERMIT, PART III GENERAL CONDITIONS*

1 PERMIT APPLICATION DOCUMENTS

*The full "permit" as DTSC appears to be defining it was not made available electronically. Instead critical material---all the details of the environmental*

*monitoring program---were [sic] concealed in another document which was merely referenced but treated as an integral part [sic] of the permit. I would ask that DTSC reopen the public comment period and provide the full "permit" electronically on the web site so that the public/reader could actually see the entire document, especially those very critical environmental monitoring components that are required by regulation to be specified in the permit (not just be part of the application) but that DTSC has chosen to merely reference in a separate document.*

#### Response to Comment 3.10

DTSC disagrees with the comment. No information was concealed and all pertinent documents were available for public access. See Response to Comment 3.9.

### 3.11 *DRAFT POST-CLOSURE PERMIT, PART III GENERAL CONDITIONS*

#### 2. EFFECT OF PERMIT

*DTSC in (g) [sic] that conflicts between the "Permit" and the "Approved Application" are to be resolved in favor of the "Permit". This is malarkey. The Permit consists of the "attachment" that DTSC cobbles together and the "Approved Application" as DTSC so infamously claims throughout its permit team approach to permitting. Nice this circular nonsense.*

#### Response to Comment 3.11

Assuming this comment is referring to the fact the Approved Application is incorporated into the permit, incorporation by reference is a common practice used in numerous legal documents, and is specifically acknowledged in California Code of Regulations, title 22, section 66270.32(e), as a legitimate method in constructing hazardous waste facility permits.

### 3.12. *DRAFT POST-CLOSURE PERMIT, PART III GENERAL CONDITIONS*

#### 3. COMPLIANCE WITH CEQA

*By mis-using an NOE, DTSC has not complied with CEQA. The removal of corrective action from the previous permit as well as the various closure decisions described in this Permit, represent significant changes that have serious environmental implications. For example, the CACA is not enforceable---it is not an order---while the former permit conditions were enforceable---even though DTSC never saw fit to enforce them.*

Response to Comment 3.12

DTSC disagrees with the statement that DTSC has not complied with the California Environmental Quality Act (CEQA). The Notice of Exemption prepared for this permit renewal complies with CEQA and the preparation of a Notice of Exemption is appropriate pursuant California Code of Regulations, title 14, division 6, chapter 3, section 15061(b)(3). See Response to Comment 6 for additional information regarding the Notice of Exemption.

There is no significant change in this permit renewal. DTSC continues to investigate and remediate the Facility but is using a different mechanism for enforcement of corrective action. The corrective action consent agreement (CACA), which is an order on consent, is used for corrective action. Conditions and the schedule for compliance in a consent agreement are as enforceable as conditions in a permit or an enforcement order.

3.13. *DRAFT POST-CLOSURE PERMIT, PART III GENERAL CONDITIONS*

4. ENVIRONMENTAL MONITORING

*DTSC fails to adhere to the specificity requirements of Articles 6 and 17 in (a) through (i). Please provide the legal basis for playing off the regulatory requirements for specifying such elements as POC in the permit-----especially since DTSC now claims that the Permit is only the attachment---against another regulatory citation allowing inclusion by reference. Clearly specification is one thing and inclusion by reference is another. Please justify not providing the "Approved Application" together with the "Attachment" on DTSC public notice website---since the bulk of the substantive permit requirements seem to be in the "Approved Application". Specifically explain why DTSC continues to obfuscate this in face of all of previous public comment on other permits. DTSC does not meet USEPA's requirements for transparency. Perhaps, a complaint with respect to DTSC taking Grant money and not meeting USEPA goals is in order. Perhaps through Senator Barbra Boxer??? Please revise the draft permit and re-notice.*

Response to Comment 3.13

It is not true that DTSC did not provide the "Approved Application" on DTSC's website. All pertinent documents for the permit decision process were posted at DTSC's EnviroStor. The incorporation of documents by reference is a common practice, and is specifically acknowledged in California Code of Regulations, title 22, section 66270.32(e), as a legitimate method in constructing hazardous waste facility permits. See Response to Comment 3.9 for more detailed information.

3.14. *DRAFT POST-CLOSURE PERMIT, PART III GENERAL CONDITIONS*

4. *ENVIRONMENTAL MONITORING*

*DTSC fails to fulfill its own regulatory requirements. It is stated that "[t]he postclosure permit outlines procedures to fulfill regulatory requirements for... (2) environmental monitoring...." Certain environmental monitoring requirements are required by the California Code of Regulations, title 22, (title 22, CCR) to be specified in the permit not merely "outlined". Title 22, CCR, §66264.91(b) clearly states "[t]he Department shall specify in the facility permit the specific elements of each monitoring and response program." DTSC has failed to do this. Referring to separate document(s)---not even included as attachments to the draft permit---is simply inadequate.*

Response to Comment 3.14

DTSC disagrees with this comment. Part III.1 of the Permit clearly states that the Approved Application is made a part of the Permit by reference and the Approved Application is also posted at DTSC's website for public access. The incorporation of documents by reference is a common practice, and is specifically acknowledged in California Code of Regulations, title 22, section 66270.32(e), as a legitimate method in constructing hazardous waste facility permits. See Response to Comment 3.9 for more detailed information.

3.15. *DRAFT POST-CLOSURE PERMIT, PART III GENERAL CONDITIONS*

4. *ENVIRONMENTAL MONITORING*

*The public/reader is left with the impression, from this and foregoing discussion/conditions, that ground water is the only medium to which environmental monitoring applies at this facility. There is something wrong with the decision of DTSC to apparently neglect other media. Specifically, if ground water has not been impacted but is threatened by waste discharge, it would be prudent to have instituted vadose monitoring to determine if contaminants in the*

*landfill are in fact migrating towards ground water. If so, actions should then be taken to prevent discharge into ground water or the WDRs need to reflect the amount of such discharge that will be allowable a seeming conflict with the anti-degradation policy)[sic]. Vadose zone monitoring is the early warning system is [sic] most preferable---groundwater monitoring is in effect a backup.*

#### Response to Comment 3.15

The contaminants have already migrated into the groundwater and the permit requires continued monitoring of the groundwater. Please note that TPI continues to operate a groundwater and soil vapor extraction system and vadose zone is being monitored under the corrective action.

### 3.16. *DRAFT POST-CLOSURE PERMIT, PART III GENERAL CONDITIONS*

#### 4. *ENVIRONMENTAL MONITORING*

*A groundwater protection standard (GWPS) is required to be established by DTSC under title 22 CCR §66264.92 which shall consist of the list of constituents of concern (COCs)[title 22 CCR §66264.93], concentration limits [title 22 CCR §66264.94], and [sic] the points of compliance (POCs) and all monitoring points [title 22 CCR §66264.95]. However, in accordance with title 22 CCR §66264.93, DTSC is particularly required to specify in the permit---not in the permittee's application out in the ether [sic] somewhere--- those COCs for the post-closed unit to which the GWPS shall apply. These 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 closed unit. DTSC fails to do that in this draft permit. The public/reader is referred to a document that is not in evidence as part of the permit. There should be a list of the COCs in the body of the permit. In effect, DTSC has deliberately concealed the details of the permit from the public with a policy of "streamlining" that amounts to application of an underground regulation. Similar comments hold for most of this "environmental monitoring section".*

#### Response to Comment 3.16

Part III.1 of the Permit clearly states that the Approved Application is made a part of the Permit by reference. The incorporation of documents by reference is a common practice, and is specifically acknowledged in California Code of Regulations, title 22, section 66270.32(e), as a legitimate method in constructing hazardous waste facility permits. Please see Response to Comment 3.9 for detailed information.

3.17. *DRAFT POST-CLOSURE PERMIT, PART III GENERAL CONDITIONS*

4. *ENVIRONMENTAL MONITORING*

*There needs to be a permit modifications section to describe very specific permit modifications under title 22 CCR, chapter 14, article 6 for environmental monitoring and response systems. If the Permittee or DTSC determines that the existing program does not satisfy the requirements of title 22 CCR §66264.97, §66264.98, §66264.99, or §66264.100, the Permittee shall submit an application for a permit modification within ninety (90) days of such determination, in accordance with the permit modification procedures in title 22 CCR §66270.42, to make the appropriate changes to the program [title 22 CCR §66264.98(l) and (m); title 22 CCR §66264.99(h) and (i); title 22 CCR §66264.100 (l) and (j)].*

Response to Comment 3.17

Comment noted. If changes to the approved Application are needed, a permit modification pursuant to California Code of Regulations, title 22, sections 66270.42, will be submitted. Adding a permit modification section in the permit is not needed since the process is already specified in the regulations.

3.18. *DRAFT POST-CLOSURE PERMIT, PART III GENERAL CONDITIONS*

6. *POST-CLOSURE COST ESTIMATE*

*DTSC has not adequately described post-closure costs and how they relate to the removed elements of the previous permit. Why is corrective action AFR or PBR AFR not mentioned here? What are the cost elements covered? Was the building concrete adjoining the “clean closed” units ever sampled and analyzed?*

Response to Comment 3.18

The closure of the TPI facility is not within the scope of the project. Please note that TPI completed the closure activities in 1994 and a cost estimate for the closure is no longer needed. However, the facility is required to provide an estimate and demonstrate financial assurance for post-closure care activities. The estimated amount for the post-closure is specified in Part III.6 of the permit.

The financial assurance responsibilities for corrective action and permit-by-rule are not within the scope of the permit. Please note that the permit is only for post-closure care activities at the TPI facility.

3.19. DRAFT POST-CLOSURE PERMIT, PART IV PERMITTED UNITS AND ACTIVITIES

UNIT 1

*Waste from this multi-unit unit has putatively migrated off-site---units are right at property line. Is the off-site covered by a cap? Has DTSC ever investigated beyond the immediate footprint of the tanks? If not, why not? If not, why not addressed herein? This is clearly a post-closure issue and not a corrective action one. Explain why the activity type does not include the other "closure structures"---groundwater extraction and SVE operation.*

Response to Comment 3.19

The scope of this project is limited to the post-closure care activities only. The decision of the closure requirements for Unit 1, including the investigation and capping, is not within the scope of this permit.

Unit 1 was closed with waste in place and its closure certification was acknowledged in 1994. As a result, Unit 1 is subject to post-closure care requirements specified in California Code of Regulations, title 22, sections 66264.117, 66164.118, 66264.119 and 66264.120. The post-closure activities described in the final permit comply with these regulations. For any information regarding the closure of Unit 1, please contact DTSC's Chatsworth Public Record Office.

Please note that Unit 1 is not the only source of a release from the Facility. Releases from Unit 1 and other solid waste management units have been commingled together. As a result, investigations and remediations at the site continue under corrective action. The groundwater extraction and soil vapor extraction system is a remedy selected to remediate the contaminated plumes at the TPI Facility. Therefore, it is not a closure structure but a remediation system.

3.20. DRAFT POST-CLOSURE PERMIT, PART V SPECIAL CONDITIONS

*(1) Why bother with this condition? Shouldn't it have been in the "Approved Application"? Is DTSC admitting that even after X NODs, TPI could not get its application right?*

Response to Comment 3.20

The submittal of statistical method for determining background concentration values is specified in the Approved Application and required by California Code

of Regulations, title 22, section 66264.97 (e)(6). The condition is to ensure the enforceability and appropriate resource for reviewing this statistical method.

3.21 DRAFT POST-CLOSURE PERMIT, PART V SPECIAL CONDITIONS

*(3) Please explain the regulatory basis for reducing the frequency and discontinuing the Appendix IX sampling. Aren't the frequency and Appendix IX sampling a direct copy form [sic] the federal regulations? How does DTSC take Grant money and maintain authorization without being compliant with fed regs? More specifically, please explain how DTSC ignored the frequency requirements from 1994 to present. TPI has "illegally" been allowed to monitor annually for 16 years!!!!*

Response to Comment 3.21

As stated in the Part B Application, Section E-2, TPI is conducting the groundwater corrective action monitoring pursuant to California Code of Regulations, section 66264.100. The regulations for groundwater corrective action monitoring do not specify frequency of the groundwater sampling neither does it require the continuation of the Appendix IX sampling. The proposal made by TPI does not conflict with any regulations.

3.22 DRAFT POST-CLOSURE PERMIT, PART VI 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 to Comment 3.22

The following condition is added to Part VI of the permit:

*“As directed by DTSC, after DTSC's approval of the Interim Measures Workplan and/or after selection by DTSC of the corrective measures, Respondent shall establish a financial assurance mechanism for Interim Measures and/or Corrective Measures Implementation. The financial assurance mechanisms may include any mechanism described in California Code of Regulations, title 22, sections 66264.143. The mechanism shall be established to allow DTSC access to the funds to undertake Interim Measures and /or Corrective Measures if Respondent is unable or unwilling to undertake the required actions.”*

- 3.23 *Please provide the legal basis for failing to include the CACA as part of the public notice. Why is corrective action noticed in 1994 and then carefully removed from public scrutiny in 2010? What is DTSC concealing and why?*

Response to Comment 3.23

The corrective action has been removed from the permit because a consent agreement was signed. This removal is consistent with all other facilities' permits where a consent agreement is used for corrective action. Part VI of the permit clearly requires corrective action to be carried out under the Corrective Action Consent Agreement, Docket No. P3-09/10-003. The agreement is also available at DTSC's EnviroStor. DTSC did not conceal any information.

- 3.24 *NOTICE OF EXEMPTION (NOE)*

*DTSC fails to make a case for the NOE. Where is the Initial Study----was one done to arrive at the conclusion that an NOE was acceptable? Why was it not provided to the public website? What was the evaluation process to arrive at the NOE decision? Was simply the timing problem [sic]?*

Response to Comment 3.24

The Notice of Exemption and other permit renewal documents were available at both DTSC's website and information repositories for public review. Reasons explaining why the project is exempt are also described in the Notice of Exemption prepared for TPI. There was no timing problem.

### 3.25 NOTICE OF EXEMPTION (NOE)

*Please explain why no health risk assessment was cited to support the NOE? The Exide facility was required to prepare an EIR to support contentions that its continued operation would not exceed a "level of significance" as described by DTSC's CEQA folk (PEAS). Please explain the elasticity in PEAS view-----one facility requires consideration of significance threshold and the other gets an NOE.*

#### Response to Comment 3.25

Comparing Exide to TPI is inappropriate. Exide is still actively receiving offsite hazardous waste for treatment and storage. TPI is a closed facility which no longer receives any offsite hazardous waste for treatment or storage. The need for an Environmental Impact report is a site specific decision based on each facility's operations.

The preparation of a notice of exemption complies with General Rule specified in California Code of Regulations, title 14, division 6, chapter 3, section 15061(b)(3). DTSC determined that renewal of an existing Permit has no potential to cause significant risk to human health and the environment. Reasons explaining why the project is exempt are also described in the Notice of Exemption prepared for TPI.

### 3.26 NOTICE OF EXEMPTION (NOE)

*DTSC needs to prepare an HRA and circulate a replacement environmental document-----a negative declaration or mitigated negative declaration should be considered but only after consideration of the as yet undetermined extent of ground water contamination.*

#### Response to Comment 3.26

At this time, DTSC has no evidence that the site poses significant risk to human health and the environment. As DTSC mentioned in Response to Comment 3.25, a notice of exemption may be, and was determined to be in this case, appropriate for a permit renewal.

3.27 *I would again urge DTSC to reopen the public comment period and provide all of the pieces that supposedly constitute the draft post-closure permit in the same electronic format on the DTSC website. Incomplete or piecemeal noticing is wholly unreasonable and not transparent. If you have questions regarding the foregoing comments please call me at (310) 455-1962.*

Response to Comment 3.27

DTSC strongly disagrees with this comment because all information regarding the permit renewal was and is available on DTSC's website and information repositories for public access. Re-opening the public comment period is unnecessary.

4. **Comment by Yvonne Mallory (Economic Development/Housing Programs Manager, Brownfield Program Manager, City of Gardena, Office of the City Manager)**

- 4.1. *Today I received a Fact Sheet about the above named company with a Gardena address. Although the business has a Gardena Zip code, the business is not actually located in the City of Gardena but rather the unincorporated area or Los Angeles. Therefore, we do not feel it would be appropriate for us to comment on this project or even to receive any further notices concerning its status.*

Response to Comment 4.1

Comment noted. The City of Gardena will be deleted from the DTSC's mailing list and this Response to Comments will not be mailed to the City.