



Alan C. Lloyd, Ph.D.
Agency Secretary
Cal/EPA



Department of Toxic Substances Control

8800 Cal Center Drive
Sacramento, California 95826-3200



Arnold Schwarzenegger
Governor

January 10, 2005

The following letter was sent on January 10, 2005 to all recipients of the December 9, 2004 Imminent and Substantial Endangerment Determination and Order and Remedial Action Order Docket Number I/SE-D 04/05-004.

Dear XXX-XXX:

The Department of Toxic Substances Control (DTSC) received a variety of letters in response to the January 4, 2004 deadline for submittal of a Notice of Intent to Comply (NOI) pursuant to Section VII of the BKK Landfills Imminent and Substantial Endangerment Determination and Remedial Action Order (Order) dated December 2, 2004. Pursuant to the extensions that DTSC confirmed on December 23, 2004, this Order requires the Respondents to begin conducting specific response/removal actions on January 21, 2005.

The NOI letters received by DTSC contained varying levels of commitment to fully implement the Order. DTSC is sending this letter to reiterate and clarify DTSC's expectations for implementation of the work required under the Order. This letter also reviews the need for establishing a steering committee and the implications associated with non-compliance with the Order.

Key Initial Requirements of the Order:

1) Section 5.1.1 - "On or before January 21, 2005 (per DTSC extension), Respondents shall conduct all essential landfill operations and maintenance of the Site outlined in Exhibit B."

Proper completion of this responsibility requires the Respondents to carry out the activities outlined in Exhibit B by January 21, 2005. Submittal of a proposal by this date that outlines plans to carry out this work sometime in the future after an "agreement" covering the work is negotiated by an unspecified time in the future is *not* in compliance with the Order. In addition, assertions that it is impossible for Respondents to assume responsibility for conducting the emergency operations by January 21, or that Respondents can implement only specified provisions of the Order, are *not* justifications for noncompliance with the Order.

As DTSC discussed at the December 17, 2004 meeting, DTSC will consider short-term compliance options such as a) Respondents funding essential operations and functions carried out by the State's contractor for a limited period, and b) Respondents assuming responsibility for Site operations by directly contracting with and funding the State's contractor that is carrying out this work. Naturally, DTSC will also consider the compliance option of Respondents contracting with and funding another qualified contractor to carry out the work properly in accordance with the required scope of work.

2) Section 6.1 – Project Coordinator. “On or before January 21, 2005 (per DTSC extension), Respondents shall submit to DTSC in writing the name, address, and telephone number of a Project Coordinator whose responsibilities will be to receive all notices, comments, approvals, and other communications from DTSC.”

Respondents are expected to comply with this requirement.

3) Section 6.1.1 – Communication and Coordination Plan (CCP) - “On or before January 21, 2005 (per DTSC extension), Respondents shall submit to DTSC for its approval a CCP which specifies the requirements and procedures by which Respondent(s) will communicate and coordinate with one another in carrying out the requirements of this Order.”

Respondents are expected to comply with this requirement.

4) Section 6.2 – Project Engineer/Geologist. “The work performed pursuant to this Order shall be under the direction and supervision of a qualified professional engineer or a registered geologist in the State of California, with expertise in hazardous substance site management and post-closure care of landfills. On or before January 21, 2005 (per DTSC extension), Respondent(s) must submit: a) The name and address of the project engineer or geologist chosen by Respondent(s); and b) in order to demonstrate expertise in hazardous substance management and post-closure landfill care, the resume of the engineer or geologist, and the statement of qualifications of the consulting firm responsible for the work.”

Respondents are expected to comply with this requirement.

5) Section 6.5 Submittals. “All submittals and notifications from Respondent(s) required by this Order shall be sent simultaneously to:

Don Plain, Branch Chief (three copies)
Attention: Andy Burow
Emergency Response and Special Projects Branch
Site Mitigation and Brownfields Reuse Program
Department of Toxic Substances Control
8810 Cal Center Drive
Sacramento California 95826-3200

With copies to:

Jose Kou, Branch Chief (two copies)
Attention: Richard Allen
Southern California Permitting and Corrective Action Branch
Hazardous Waste Management Program
Department of Toxic Substances Control
Glendale, California 91201-2205"

A number of Respondents did not comply with this submittal requirement. DTSC appreciates the cooperation of those who did comply with this requirement and requests all Respondents to do so in the future.

Steering Committee

As discussed at the December 17, 2004 meeting and in its December 23, 2004 letter, DTSC strongly recommends that a potentially responsible party (PRP) steering committee be established and led by a few key representatives. Establishing a committee of this nature will greatly facilitate implementation of the Order. A copy of the PRP contacts list with names and addresses is enclosed for your information to assist you with this effort.

Noncompliance with the December 2, 2004 Emergency Order

DTSC is serious about its intent to fully implement this Order on schedule. The conditions that currently exist at the BKK site continue to deteriorate with repairs of essential systems being required on a daily basis. Recent wet weather conditions are exacerbating a number of problems. Management of leachate from the landfills and landfill storm-water runoff are particularly critical due to the fact that releases of hazardous substances from the site could occur if these systems are not properly repaired and maintained. Also, BKK recently issued a Proposition 65 update that contained a warning to residents in the Nogales End area informing them that reportable levels of vinyl chloride were detected within the residential area.

Determinations of noncompliance will be issued to any Respondents who do not fully comply with the Order. As noted in Section 9 of the Order, each noncomplying Respondent may be liable for penalties up to \$25,000 for each day that it is out of compliance with any term or condition of the Order as well as for punitive damages of up to three times the amount of any costs incurred by DTSC as a result of the failure to comply.

DTSC's Emergency Response Program is prepared to work closely with you to ensure that this Order is carried out on schedule. We strongly encourage you to comply with the Order requirements.

Sincerely,

Signature on original letter.

Donald R. Plain, Chief
Emergency Response and Special Projects Branch.

Enclosure