RESPONSE TO COMMENTS
P. KAY METAL, INC.
LOS ANGELES, CALIFORNIA
STANDARDIZED HAZARDOUS WASTE FACILITY STORAGE PERMIT
September 30, 2009

BACKGROUND

P. Kay Metal, Inc. submitted an application for Standardized Hazardous Waste Facility Permit (Permit) to the Department of Toxic Substances Control (DTSC) on July 19, 2007 for its hazardous waste storage and treatment facility. DTSC reviewed the permit application, prepared the draft Permit and informed the public of a 45-day public comment period on the draft Permit and the California Environmental Quality Act (CEQA) Notice of Exemption on February 6, 2009. The public comment period ended on April 12, 2009. The public was informed by a display advertisement in the Vernon Sun newspaper in English and Spanish. Copies of a fact sheet (in English and Spanish) were mailed to the persons on the facility mailing list. A paid public notice announcing the public comment period was aired on an English and Spanish language radio station.

DTSC received comments from one person. This document summarizes the comments and provides DTSC's responses. This document will be provided to the commenter, placed in information repositories for this project and added to the administrative record for the Final Permit Decision.

COMMENTER: Philip B. Chandler

Comment 1: Please explain whether emissions monitoring is performed.

DTSC Response:

P. Kay Metal has a monitoring system that detects the amount of particulates in the air stream. When particulates reach preset levels that are above the regulatory limits, the alarm system is triggered and the system is shut down until the problem is resolved.

South Coast Air Quality Management District (SCAQMD) issued separate permits entitled "Permit to Operate" (hereinafter referred to as "SCAQMD air permits) for the Melting Furnaces and for the air pollution control system (baghouse). P. Kay Metal is required to renew its air permits from the SCAQMD annually. After a fire at the facility in 2001, P. Kay Metal, on November 5, 2002, obtained from SCAQMD a "Permit to Construct" (PTC) for the baghouse and the Melting Furnaces. The PTC permit required P. Kay Metal to operate the Melting Furnaces and the baghouse in accordance with the requirements contained in SCAQMD Rule 1407 and Rule 1420.

As part of these requirements, P. Kay Metal conducted a source test on May 19, 2004 at the inlet and outlet of the two newly installed collectors. The results of the 2004 source test are located in the public file room of DTSC's Chatsworth Office.

Based on P. Kay Metal's PTC Application dated May 2002 Report and information provided by SCAQMD, P. Kay Metal emits less than half a pound of lead per day. Therefore, the Facility is exempt from preparing an air dispersion modeling and from conducting ambient air monitoring. However, the Facility conducted an Airborne Contaminant Sampling activity in accordance with Cal-OSHA regulations.

In addition, DTSC is requiring P. Kay Metal to test every two years the air pollution control system and the Melting Furnaces to verify that the system is operating efficiently. The test parameters include stack volume flow rate, stack gas temperature, water content and lead content. The Permit includes a condition in Part V (9) that requires the facility to conduct such tests. The language of the permit condition is as follows:

"The Permittee shall measure, sample and analyze the exhaust emissions of the stack that serves as the air pollution control system (baghouse) and the Melting Furnaces to verify that the system is operating properly and efficiently. The parameters to be measured, sampled and analyzed shall include the stack gas volume flow rate, stack gas temperature, water content, and lead content. The analysis shall be performed once every two years. The Permittee shall perform analysis using United States Environmental Protection Agency (U.S. EPA) or the SCAQMD methods (i.e. SCAQMD Rules 1407, 1420, etc.). The Permittee shall submit analytical results to DTSC and the SCAQMD within 30 days of completing the test analysis."

Comment 2: Has any clean-up activity been performed?

DTSC Response:

A Phase I Site Assessment and several soil investigations were conducted in the past. The 1995 soil analysis results showed elevated levels of lead near the baghouse. These results were considered inconclusive as to whether the sub-surface soils were contaminated with lead in a significant amount. Other soil investigations were conducted in 1998 and on August 22, 2001.

The 2001 investigation was conducted for the City of Vernon to determine

the presence of any contaminated soil due to historic operations, and it was conducted for the purpose of the City of Vernon's CEQA Negative Declaration for the reconstruction of the facility. The soil sampling and analysis conducted indicated the presence of small quantities of lead above the regulatory thresholds in one area underneath the former Melting Pot 2, and all other sample analyses indicated lead in quantities consistent with background concentrations of lead in native soil. Soil in the effected area was removed prior to any grading activities. Confirmatory sampling at two feet below ground surface indicated lead concentrations far below the Preliminary Remediation Goal of 750 mg/kg established by the U.S. EPA Region IX. Based on the investigation and soil removal, the City of Vernon determined that no further action was necessary. The CEQA Notice of Exemption prepared by DTSC concurred with the findings of the City of Vernon's CEQA documents. Based on DTSC's records, DTSC concluded at the time when the draft permit was issued, and as stated in the Notice of Exemption, that the facility was adequately cleaned up and that the facility was not contaminated as a result of its previous operations.

Comment 3: Please explain how many revisions and NODs were required. Please explain when the first application was submitted. Did the department deliberately avoid issuing NODs to avoid triggering of permit denial?

DTSC Response:

The first permit renewal application was submitted on July 19, 2007 and DTSC issued three Notices of Deficiencies (NOD). Upon the issuance of the third NOD, DTSC notified P. Kay Metal that unless it submitted a revised application with the deficiencies corrected, DTSC would deny the permit application. P. Kay Metal complied with the requirements of the third NOD and DTSC proceeded with the permit application process.

Comment 4: Why doesn't the citation in (f) follow the Department guidance for such citations?

DTSC Response:

In terms of citing statutes and regulations in legally enforceable documents, it has been DTSC's policy for the last few years to follow the California Style Manual published by the California Supreme Court. The citations are abbreviated in certain ways when they are contained in parentheses.

Comment 5: DTSC has not complied with CEQA.

DTSC Response:

DTSC conducted an environmental review of the potential impacts associated with the proposed permit renewal for the facility, and determined that this project was categorically exempt from the provisions of CEQA pursuant to CEQA Guidelines section 15301 for an existing facility..

In 1997, DTSC prepared an Initial Study and a Negative Declaration for the permit that was issued in 1997. The Initial Study and Negative Declaration found that the project would have no significant impact on the environment. The Negative Declaration was approved on December 19, 1997.

In 2002, the City of Vernon prepared an Initial Study and Negative Declaration for the reconstruction of the facility due to the 2001 fire that destroyed the facility. The Initial Study and Negative Declaration prepared by the City of Vernon found that the reconstruction project would have no significant effect on the environment. DTSC, acting as the Responsible Agency, reviewed the City of Vernon's Initial Study and Negative Declaration and concurred with the City of Vernon's findings that the reconstruction project would not have a significant effect on the environment.

DTSC prepared and filed a Notice of Exemption for this permit renewal decision pursuant to CEQA Guidelines section 15301.

Comment 6: DTSC has not adequately dealt with closure costs. Any modern cost estimate of $139, 393 is a joke with respect to a facility that has operated on site for 70 years.

DTSC Response:

The facility is only required to close the authorized units and must provide funding for all activities associated with the closure of those units. An independent cost estimate was conducted by DTSC in November 2004 using the Cost Pro software. Cost Pro uses nationally recognized cost estimating procedures. The independent cost estimate showed a cost of $131,637.00 to close the facility. The updated closure cost estimate of $139,393.00 proposed by the facility for the permit renewal application was in line with the inflation rate. In fact, this proposed cost estimate was

slightly higher than what DTSC would have estimated based on the inflation factor.

Comment 7: Miscellaneous units apply to land disposal units that do not meet the definition of surface impoundment, waste pile, land treatment unit or landfill.

DTSC Response:

The activity at the facility is smelting or melting of solder dross in furnaces to recover the lead and tin from the dross in the furnaces. Industrial furnaces are not land disposal units. However, the State of California adopted regulations to provide that industrial furnaces exempted from Article 8 of Chapter 16 of Division 4.5 of Title 22 of the California Code of Regulations are subject to regulations as "miscellaneous units". These regulations were adopted to ensure compliance with California Health and Safety Code sections 25200 and 25201 which require resource recovery facilities, such as this facility, to obtain hazardous waste facility permits from DTSC. These regulations amended section 66260.10 of Title 22 of the California Code of Regulations to revise the definition of "miscellaneous units" to include industrial furnaces that are exempt from Article 8 of Chapter 16 of Division 4.5 of Title 22 of the California Code of Regulations because they recover metals. These regulations also amended subsections (c) and (f) of section 66266.100 to provide that the units exempt from these subsections are still regulated as "miscellaneous units". These provisions were initially adopted as emergency regulations on December 17, 1996. They were formally adopted and approved by the California Office of Administrative Law on May 15, 1998. In addition, effective September 26, 2001, the United States Environmental Protection Agency, pursuant to the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901 et seq., approved the State of California's application for final authorization of certain revisions to the State hazardous waste program governing the use of boilers and industrial furnaces. RCRA Section 3009 (42 U.S.C. Section 6929) expressly authorizes state and local governments to adopt requirements that are more stringent, or broader in scope, than the federal RCRA requirements, as in the case of California's requirements for boilers and industrial furnaces.

The requirements for miscellaneous units are in Article 16 of Chapter 14 of Division 4.5 of Title 22 of the California Code of Regulations.

Comment 8: Why are Melting Furnaces A and E cited as one unit? The physical

descriptions identify them as having significantly different characteristics? On top of this Furnace E is cited as having two pots. This kind of "lumping" is deliberately confusing to the public.

DTSC Response:

California Code of Regulations, title 22, section 66260.10 defines a Hazardous Waste Management Unit as "a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, a waste transfer area , an incinerator, a tank and its associated piping and under lying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes container and the land or pad upon which they are placed."

In the case of the furnaces at the facility, they were grouped into one hazardous waste management unit because they are located in the same contiguous area and on the same pad as provided in the regulations. Furthermore, the hazardous waste management requirements apply to each of the furnaces the same way regardless of whether they are considered as one unit or as separate units.

Comment 9: What do you mean by miscellaneous treatment unit?

DTSC Response:

For clarification purpose, the word "miscellaneous" has been deleted from the Permit Section for Activity Type in Unit 1.

Comment 10: Which section of the California Code of Regulations are you indicating that these furnaces are being regulated under?

DTSC Response:

See response to comment 7.

Comment 11: What impurities does the solder dross contain? Are there plastics, rubber, acrylics, etc., entrained with the dross? If so, how much? What additional gaseous emission constituents might be resulting from such impurities?

DTSC Response:

Dross is a metallurgical term used to describe non-metallic waste products like oxides and sulfides that form on the surface of the molten solder. It forms on top of molten solder as a result of the interaction with air. Usually in soldering, the dross from pure metal is mostly tin oxide with some lead oxide. Dross has been reported to contain the metallic impurities picked up during soldering. Dross also contains other metal reaction products like sulfides and residue such as burned flux.

The solder dross at the facility is produced from wave soldering components. Soldering operations conducted by P. Kay Metal's customers generally use fluxing materials containing isopropyl alcohol to prepare the surface of electronic components. The wave solder machines operate at an elevated temperature. Any volatile material will evaporate in the solder bath. Volatile material in the bath will evaporate before the material is sent to the facility. . To show that volatiles were not present in the solder dross, DTSC requested, P. Kay Metal to sample the solder dross. The results of the analysis showed no signs of volatile material in the dross. The impurities in the solder dross are metals such as Antimony, Arsenic, Copper, Silver, Iron, Nickel, Bismuth, Indium, and Zinc.

The solder dross consists of granules and large solid clumps of metal. The facility inspects the contents of the container to insure that the solder dross waste does not contain other materials such as plastic and rubber. The SCAQMD air permits issued to the facility do not allow the facility to treat solder dross waste that contains materials such as rubber, plastic, paper, rags, oil, grease, or similar smoke-producing material. To emphasize this requirement, SCAQMD included a condition in the SCAQMD air permits as follows: "The Permitee shall inspect all hazardous waste containers to make sure that the solder dross waste is not contaminated with rubber, plastic, paper, rags, oil, grease, or other similar smoke-producing material. Solder dross waste contaminated with this material must not be placed in the furnaces."

Comment 12: Are oxides of metals non-metals?

DTSC Response:

Oxides are non-metal. "Oxides of metal" or "metal oxides" as used in the permit are the oxides and the metal (mostly lead and tin) that cannot be separated from the oxides.

Comment 13: So the molten metal goes from waste to product in place--- not after removal from the waste management unit? This is illogical.

DTSC Response:

Generally, once a given load or batch is certified to meet the specifications, it is considered fully reclaimed. At the facility, once the dross has been processed, the molten dross in the furnace is sampled and the analysis is verified. In most cases, it will be a combination of pure lead and tin and occasionally there will some impurities of other metals at less than one percent. When 99% to 100% of lead and tin is reclaimed, the treatment process is completed and the material is no longer subject to hazardous waste regulations. The molten metal is then poured into molds to form ingots, bars and sow. This material or solder is sold to the facility's clients. Section V.A.3 of the permit application explains the sampling and analysis conducted to achieve the recycling specification.

Comment 14: Please explain what the chemical nature of the baghouse materials is. Are there any analyses?

DTSC Response:

The dust collected in the baghouse from the furnaces contains lead, tin, copper, nickel, and zinc. The permit application stated that the facility used process knowledge to characterize the waste. The facility's representative has since clarified that all of the facility's hazardous wastes are sampled and analyzed before they are sent to an authorized facility for further recycling or disposal. A copy of a sample analysis has been included in the permit application. The permit application was also revised to reflect this clarification.

Comment 15: What sort of emissions testing is performed? Is perimeter monitoring required? If not, why not? What is the nature of the particulates and aerosols that might be emitted? DTSC cites an 8 to 10 hour cycle, what are the emissions curves over that cycle?

DTSC Response:

The facility's air pollution control system (baghouse), Melting Furnace A

and Melting Furnace E are permitted by SCAQMD pursuant to Division 26 of the Health and Safety Code and the SCAQMD Rules 1407 and 1420. The facility is required to conduct air emission testing and monitoring pursuant to the SCAQMD air permits, including SCAQMD Rules 1407 and 1420. Rule 1407 and Rule 1420 require the facility to conduct a source test, air dispersion modeling, and ambient air monitoring. However, the facility is exempt from preparing an air dispersion modeling and conducting ambient air monitoring. A source test was conducted in 2004. The Permit will require the facility to conduct a source test every two years. Perimeter monitoring is not a requirement of Rules 1407 or Rule 1420. Also see response to comments 1 11 and 17.

Any particulates and aerosols that are emitted are generated from the emissions from the Melting Furnaces and are associated with the contents of the solder dross waste. As explained in response to comments 11 and 14, solder dross waste consists mostly of tin and lead, small quantities of other metals, oxides of tin and lead, and sulfur oxides. Volatile organic compounds are not present in the solder dross.

For clarification purpose, the Unit-Specific Special Condition No. 3 for Unit 1 has been revised as follows: “The Permittee shall operate the ventilation and air pollution control system to control the hazardous waste emissions whenever a melting furnace is in operation. The Permittee shall conduct air emission testing and monitoring pursuant to the SCAQMD air permits, including SCAQMD Rule 1407 and 1420.”

Comment 16: Where does the dross come from? Aren’t impurities also a source for waste codes? Is the material that comes in the door tested at all? What does DTSC mean by metal separation----does the dross come in mixed with other metals? If so, why aren’t there waste codes for that material?

DTSC Response:

As provided in the permit application, solder dross at this facility come from open dip tanks from radiator dip solder and electronic flow solder operations. The solder dross contains some impurities of other metals such as Antimony, Arsenic, Copper, Silver, Iron, Nickel, Bismuth, Indium, and Zinc. However the facility can only receive solder dross waste where lead is the only constituent that makes the solder dross a hazardous waste. The other metals contained in the dross are below the regulatory levels for hazardous waste; therefore, no waste codes for these metals are necessary for the purpose of the permit.

As provided in the permit application, all hazardous wastes received at the facility are sampled and analyzed. A sample of the waste analysis is provided in the permit application.

As described in the draft permit, the purpose of the treatment process carried out by the facility is to separate and reclaim as much lead and tin from the solder dross as possible. The main part of the treatment is to separate the lead and tin from the oxides and other metals by removing the skimmings from the top of the molten solder dross waste.

Comment 17: If these furnaces are miscellaneous units, they are subject to Article 17 air monitoring requirements. Please revise the permit to add a requirement for an air monitoring and response plan. This plan needs to include a component addressing dry deposition.

DTSC Response:

The requirements of Article 17 of Chapter 14 of Division 4.5 of Title 22 of California Code of Regulations only apply to a regulated unit. The term "regulated unit" means a surface impoundment, waste pile, land treatment unit or landfill. There is no regulated unit authorized by this permit. Therefore, the requirements in Article 17 do not apply to this facility. The requirements of California Code of Regulations, title 22, division 4.5, article 28, 28.5 or article 27 do not apply either because the facility is not required to obtain a RCRA-equivalent hazardous waste facility permit.

The facility, however, is subject to the requirements of the SCAQMD air permits. The permit conditions, including a condition for compliance with the SCAQMD air permits, are imposed to ensure that the facility's furnace operation meets the performance standards for a miscellaneous unit as provided in Article 16 of Chapter 14 of Division 4.5 of Title 22 of the California Code of Regulations.

For clarification purpose, a Special Condition No. 13 has been added in Part V. of the permit to state as follows: "The Permittee shall comply with the SCAQMD air permits in its operation of Melting Furnace A, Melting Furnace B, and the air pollution control system (baghouse)."

Comment 18: Please revise the permit to assure that each of the furnaces is considered a unique unit.

DTSC Response:

See response to comment 8.

Comment 19: With respect to containment, please explain how dust entrained in surface water is dealt with.

DTSC Response:

There are no surface water bodies within the vicinity of the facility, including streams, rivers, major stormwater courses, ditches, wetlands, bodies of water, low lying areas, or shallow ground depressions.

With respect to surface water from precipitation (runoff), the only unit or system that may contribute to storm water dust contamination is the roll-of bin in Unit 3 (HWS-1A) and the air pollution control system. All other process activities occur inside the facility's building. To reduce the potential to affect surface water quality, the facility employs the Best Management Practices for storm water pollution prevention in compliance with its General Permit for Discharges of Storm Water Associated with Industrial Activities. In addition, the facility keeps the roll-off bin closed at all times except when adding waste to the bin. The air pollution control system is a closed system and traps 99% of the dust generated during the treatment process. The facility also sweeps any dust and debris from the floor at the end of the day and placed in the roll-off Bin.

Comment 20: The "air pollution control system" collects hazardous waste to reduce emissions into the open environment. The collected material is disposed as a hazardous waste. Therefore, these baghouses need to be considered hazardous waste management units. Please add them.

DTSC Response:

The baghouse accumulates the dust generated by the recycling process. The area where the dust is collected is used as a satellite accumulation area and not as a storage area that requires a permit. The dust collected is removed from the baghouse every 90 days. This area does not need to be permitted.

Comment 21: The XXXXX permit specified various corrective action. Envirostor indicates that no corrective action activities have

occurred in the intervening years. This draft permit contains a BS blurb about when and if SWMUs are defined corrective action would be required. This is absolute nonsense. California Code of Regulations, title 22, requires that corrective action be specified in the permit. No schedule of compliance provided in the draft permit and there is no evidence that any form of corrective action mechanism, such as a Corrective Consent Agreement, exists. DTSC is clearly not satisfying the corrective requirements in the applicable statutes for issuance of this permit.

DTSC Response:

DTSC conducted regular inspections of the facility over the years and did not find any release of hazardous waste at or from the facility. Based on DTSC's records, the no-further-action finding of the City of Vernon which was involved in overseeing the investigation and cleanup of the facility in 2001 as a result of a fire (see response to comment 2), and the findings of DTSC's inspections of the facility, DTSC concluded at the time the draft permit was issued that no corrective action was necessary for the facility or any of the Solid Waste Management Units identified in the previous permit. The Permit, however, provides that In the event that corrective action is found to be necessary, the Permittee is required to conduct corrective action pursuant to either a Corrective Action Consent Agreement or an Enforcement Order for Corrective Action issued by DTSC pursuant to Health and Safety Code sections 25187 and 25200.10.

Comment 22: 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?

DTSC Response

As stated in the Response to Comment 21, DTSC determined that corrective action was not necessary at the facility at the time the draft Permit was issued. Therefore, assurances for financial responsibility for corrective action were not required for the purpose of the Permit. The Permit, however, provides that in the event that corrective action is found to be necessary, the Permittee is required to conduct corrective action pursuant to either a Corrective Action Consent Agreement or an Enforcement Order for Corrective Action issued by DTSC pursuant to Health and Safety Code sections 25187 and 25200.10. In that case, the Corrective Action Consent Agreement or the Enforcement Order for Corrective Action would include a requirement for assurances for financial responsibility.

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. The Team strongly disagrees with the Petitioner's statement that DTSC was "attempting to end run its obligation to make a clear administrative decision - subject to public comment and CEQA - on the issue of corrective action."

Comment 23: Section IV – What were the construction standards applicable for the various secondary containments at this Facility?

DTSC Response:

The facility is not required to have secondary containment since it only accepts, stores and treats hazardous wastes that are free from liquids. California Code of Regulations, title 22, section 66264.175(d) provides

that "[T]he storage areas that store containers holding only hazardous wastes that do not contain free liquids need not have a containment system…" Except for the roll-off bin, all other containers that store any hazardous waste are inside the building and protected from precipitation. The containers are also stored on pallets under a concrete pad. The building and the concrete pad were constructed in accordance with the City of Vernon's Building Code and other building-related codes, and their design and construction were approved by the City of Vernon.

Please note that construction standards are adopted and enforced by local agencies which issue building permit and other forms of building-related authorization. Local agencies adopt their own building standards and codes consistent with the applicable provisions of the Uniform Building Code and the California Building Code.

DTSC, on the other hand, has the statutory and regulatory authority to adopt and enforce hazardous waste management requirements. These requirements are to ensure that the facility is designed, constructed, maintained and operated in order to meet specific performance standards and objectives. For example, California Code of Regulations, title 22, Section 66264.31 provides that, "Facilities shall be located, designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment." In addition, California Code of Regulations, title 22, Section 66264.175 provides performance standards and objectives for the design and operation of secondary containment systems.

Part III.2.(a) of the Permit also provides that, "The Permittee shall comply with the terms and conditions of this Permit and the provisions of the Health and Safety Code and California Code of Regulations (Cal. Code Regs.), title 22, division 4.5. The issuance of this Permit by DTSC does not release the Permittee from any liability or duty imposed by federal or state statutes or regulations or local ordinances, except the obligation to obtain this Permit. The Permittee shall obtain the permits required by other governmental agencies, including but not limited to, those required by the applicable land use planning, zoning, hazardous waste, air quality, water quality, and solid waste management laws for the construction and/or operation of the Facility."

Comment 24: DTSC should specify what corrective measures are acceptable with respect to fixing cracks, gaps, or tears in the containments.

DTSC Response:

It is not appropriate for DTSC to pre-determine what corrective measures are to be used since corrective measures are performed or applied on a case-by-case basis. For example, if the floor developed a hair-lined crack, the corrective measure may be as simple as filling the crack and reapplying the chemical-resistant coating. A growing gap may call for a different corrective measure which may include replacing the entire concrete slab. The necessary corrective measure depends on the situation.

Comment 25: 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? What was the evaluation process to arrive at the NOE decision? Was simply the timing problem?

DTSC Response:

See response to comments 5 and 27.

Comment 26: Without addressing corrective action at a smelting operation that has operated for 70 years, the permit allows for huge environmental impacts. Similarly, failure to comply with statutory environmental protections regarding CAFR, as described above, seems to be a major impact of its own. Without CAFR, many sites that DTSC oversees languish and waste discharge to the environment continues unabated, or is charged off to the public taking funds from other environmental priorities. Anyway this is regarded; there are significant potential impacts that need to be addressed.

DTSC Response:

See response to comments 2, 21 and 22.

Comment 27: Please explain why the large Exide battery recycling facility also in Vernon, is required to prepare an EIR and this smelting operation----that has been operating equally as long in Vernon, escapes with an NOE?

DTSC Response:

DTSC evaluates each project on a case-by-case basis. The Exide battery recycling facility is under an Interim Status Document authorization and did not go through CEQA analysis and documentation. P. Kay Metals, on the other hand, was issued a hazardous waste facility permit in 1998 and a Class 2 permit modification in 2002 by DTSC; and on both occasions, CEQA analysis was conducted, and an Initial Study and Negative Declaration were prepared. P. Kay Metals Inc. is renewing its permit without any significant changes to its facility or operation. DTSC conducted a preliminary review of the potential impacts associated with the proposed permit renewal for the facility and found that a categorical exemption applies. Also see response to comment 5.

Comment 28: 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.

DTSC Response:

See response to comments 5, 27 and 29.

Comment 29: Did PEAS, the project toxicologist---if there is even one that was requested for this project---and the project manager examine any source test data for emissions from the facility? If not, why not? Is there any source test data?

DTSC Response:

The City of Vernon conducted a risk evaluation of the air emissions for the operation of the facility and found that it did not present a potentially significant air quality impact. The emission calculations indicated that operational emissions for the project would not approach significance thresholds in Chapter 6 of the SCAQMD CEQA Air Quality Analysis Handbook, including thresholds for chronic and acute Hazard Index.

In compliance with the SCAQMD air permits, the facility conducted a source test as required by SCAQMD Rules 1407 and 1420. The source test was overseen and the data evaluated by SCAQMD. The source test data is available in the public file room of DTSC's Chatsworth Office.

Comment 30: Did DTSC simply accept the facility's word that the baghouses trap 99% of the emissions? What does that missing 1% consist of? How much by weight?

DTSC Response:

A source test was conducted by the facility in compliance with the SCAQMD air permits to show the efficiency of the air emission control system at the facility. The air pollution control system is a closed system and actually captures more than 99% by weight of the particulate matter during the treatment process. SCAQMD's Rules 1407 and 1420 only require that the air emission control system capture 99% by weight of the particulate matter. Also see response to comments 14 and 29.

The removal efficiency recorded in the source test averaged 99.5% based on pounds per hour. The 0.5% of the particulate matter that is not removed may consist of metals, metal oxides and sulfur oxides. See response to comment 11.

Comment 31: 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 emissions.

DTSC Response:

The City of Vernon prepared a Negative Declaration and a risk evaluation pursuant to CEQA in 2002 for the reconstruction of the facility after the fire. In addition, the facility had been in compliance with the SCAQMD air permits and SCAQMD Rules 1407 and 1420. DTSC therefore determined that a HRA was not necessary for this project. See response to comments 5, 27, 29 and 30.

Comment 32: Note further, that permit implies that corrective action is not needed---ignoring the 70 emissions history of the facility. This history goes back before the baghouses and the SCAQMD Operating Permit. Because the permit is required by statute to address corrective action, the CEQA project also must consider the same timeline as corrective action----70 years of emission and accumulated deposition at and in the area surrounding the facility. The DTSC CEQA folk must stop weaseling on their CEQA timelines where corrective action is involved.

DTSC Response:

See response to comments 5, 21. 27, 29 and 30.