

will become final. The 30 day public comment period will end on **June 9, 2010**.³ Once final, DTSC's decision will render this appeal entirely moot and Chemical Waste Management ("CWM") will withdraw the appeal. For that reason, CWM asks that the Permit Appeals Officer defer making any decision in this administrative proceeding until after the 30-day public comment period has ended and DTSC's determination is finalized. There is no reason for the Permit Appeals Officer to spend the time and resources to prepare factual findings and a written decision where there seems to be no further controversy between the parties and where the legal issues will soon be moot.

DISCUSSION

The Parties have resolved all the significant issues involving the Bakersfield site during the pendency of this appeal -- chief among them being DTSC's concurrence that the site does not require a RCRA Post-Closure Permit.

CWM largely agrees with the factual statements in the DTSC permitting branch's Supplemental Brief. There are two clarifications, however, that are worth making. First, with respect to DTSC's discussion on page 2 of its Supplemental Brief, concerning CWM's ability to submit the plan demonstrating closure by removal within the sixty-day period established in the draft permit, CWM agrees that it was unable to meet the sixty-day deadline. This was because the agency requested technical studies that took significantly longer than 60 days to complete. It was CWM's cooperation with DTSC and the company's agreement to carry out all the technical studies requested by the agency over an extended period of time that made the 60-day period

³ Under the regulations, DTSC is required to make a final determination on a closure-by-removal request within 90 days. 22 Cal. Code Reg. 66270.1(c)(5),(6). CWM submitted the petition October 15, 2009. DTSC's final decision was thus due January 12, 2010. Thus, DTSC is well beyond the mandatory deadline specified in the regulations.

unrealistic. In fact, CWM spent in excess of \$1 million over a several year period doing the site sampling and studies that DTSC requested. Meeting with and responding to DTSC's requests for technical studies on conditions at the site was an iterative process, with CWM seeking DTSC's direction on what tests should be done and how the reports should be prepared. The record reflects that there has been constructive dialogue on technical issues between the Parties during the sixty day period set out in the permit, and thereafter, as the Parties continued to discuss a possible regulatory path to discontinue the Bakersfield Post-Closure Permit.

Unfortunately, DTSC's Supplemental Brief might have left one with the impression that CWM simply ignored the deadline set by DTSC in the final permit. That was not at all the case, and the record of correspondence between the Parties bears that out.

Second, DTSC's Supplemental Brief incorrectly states that CWM did not comply with the January 26, 2004 Notice of Deficiency ("NOD") issued by DTSC for the Part B renewal application CWM filed on October 30, 2000. This is not the case. In fact, CWM responded to every item identified in the NOD, (including the preparation of the requested 30-year cost estimate) and resubmitted the Part B on August 5, 2005, following a series of letters exchanged with the agency. The Part B renewal application was incorporated by reference into the final Post-Closure permit.

Finally, CWM found DTSC's response to the second question posed by the Permit Appeals Officer confusing and nonresponsive. DTSC's Supplemental Brief explains that it elected to remove the first paragraph of Part V. Special Conditions that was included in the draft brief because it made "editorial" sense. Although CWM agrees with DTSC that removing that first paragraph from the draft permit had no effect on DTSC's insistence that CWM provide financial assurances for an additional 30 years of post-closure care, CWM does not agree that the removal of the paragraph was done to "effectively convey" DTSC's options, or that "editorially, it made

sense.” Rather, CWM continues to believe that DTSC likely deleted this paragraph once it became clear that it could not substantiate, with objective evidence, its claims that Bakersfield posed significant risks and that the existing cover was defective. In CWM’s view, when DTSC decided that it had no factual support for those claims, DTSC should have withdrawn its demand that a new 30-year post-closure care period be added. Although it did not do that then, DTSC has now reached the correct decision and is following the procedures prescribed by title 22, section 66270.1(c)(5)&(6) to discontinue Bakersfield’s Post-Closure permit.

CONCLUSION

For the foregoing reasons, CWM respectfully requests a stay of all action in this matter, pending final agency action under § 66270.1(c)(5)&(6) on DTSC’s decision to terminate Bakersfield’s Post-Closure Permit.

Respectfully submitted,

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