

1 STATE OF CALIFORNIA

2 ENVIRONMENTAL PROTECTION AGENCY

3 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

4 In the Matter of:
5 CLEANTECH ENVIRONMENTAL, INC.
6 5820 Martin Road
7 Irwindale, California 91706

Docket Number: PAT-FY12/13-01
ORDER PARTIALLY GRANTING
PETITION FOR REVIEW AND DENIAL
OF REVIEW

8 EPA ID. NO. CAL000330453

California Code of Regulations,
Title 22, Section 66271.18

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12 **I. INTRODUCTION**

13 On December 20, 2012, the Department of Toxic Substances Control's Used Oil
14 and Tanks Team (DTSC) issued a California-Only Hazardous Waste Facility Permit
15 (Permit) to the CleanTech Environmental, Inc. for a new hazardous waste storage and
16 treatment facility to be located at 5820 Martin Road, Irwindale, California (Facility).
17 Three petitions for review (appeals) of the Department's decision were filed on or before
18 January 22, 2013. Pursuant to California Code of Regulations, title 22, section
19 66271.14(b)(2), the permit decision has been stayed pending the Department's
20 determination whether the appeals meet the criteria for granting a review.

21
22 **II. JURISDICTION**

23 The Department of Toxic Substances Control has jurisdiction over hazardous
24 waste facility permits and the imposition of conditions on such permits pursuant to the
25 California Health and Safety Code sections 25200 et seq., 25186.1, subdivision (b)(1),
26 and California Code of Regulations, title 22, sections 66270.30 and 66271.18.

1 **III. BACKGROUND**

2 **A. LOCATION AND DESCRIPTION OF THE FACILITY**

3 The location, history, description, and size of the facility are presented in
4 the Permit as follows:

5
6 The CleanTech Environmental, Inc. facility (Facility) is located at 5820
7 Martin Road in the City of Irwindale in Los Angeles County, California
8 (Figure 1) at latitude 34° 7' 13" N and longitude 117° 56' 20" W. The
9 Facility is located on a site approximately 248 feet by 175 feet (0.98-acre
10 area) and its corresponding legal description is as follows:

11 *"Parcel 2 of Parcel Map No. 16282, as per map filed in Book 172, Pages*
12 *76 to 78 inclusive of Parcel Maps, in the office of the county recorder of*
13 *said county."*

14 The Los Angeles County Assessor's Parcel Number for this site is 8533-
15 11-41.

16 Agritec International, Ltd., dba CleanTech Environmental, Inc., proposes
17 to construct and operate a non-RCRA permitted Used Oil Recycling
18 Facility at 5820 Martin Road in Irwindale, Los Angeles County, California.
19 The CleanTech Environmental facility will be authorized to accept, store,
20 and recycle used oil. The facility will also accept and store waste
21 antifreeze, non-RCRA wastewater and solid waste contaminated with oil.
22 All tanks and drum storage areas will be located within a warehouse
23 building and in a concrete containment area.

24 CleanTech Environmental, Inc. submitted a Permit Application to DTSC on
25 September 1, 2010. The Permit Application underwent numerous DTSC
26 reviews and required revisions by CleanTech Environmental, Inc. On
27 November 10, 2011, DTSC determined that CleanTech Environmental,
28 Inc.'s Permit Application was technically complete.

The Facility's operations consist of collecting used oil, waste antifreeze,
non-RCRA wastewater, and oil-contaminated solid waste from offsite
generators (gas stations, oil changers, auto repair shops, etc.) and
consolidating the waste in tanks. The used oil is treated by blending,
gravity separation, and by adding a chemical reagent if necessary, to
remove metals and enhance dehydration, to meet the recycled oil
standards. The Facility would then certify the treated used oil as "recycled
oil."

1 The Facility also collects drums of used oil, waste antifreeze, and non-
2 RCRA wastewater and stores them in a drum storage area. The liquid
3 waste in containers may then be pumped into the appropriate
4 storage/treatment tanks. Additionally, the Facility collects drums of solid
5 waste including solid waste contaminated with oil, oil/water separation
6 sludge, contaminated soil with oil, contaminated containers, etc., and
7 places the drums into the drum storage area.

8 Consolidated waste antifreeze, non-RCRA wastewater, and oil-
9 contaminated solid waste are shipped offsite to a recycling, treatment, or
10 disposal facility.

11 The Facility is categorized as a small treatment facility pursuant to Health
12 and Safety Code section 25205.1, and for purposes of Health and Safety
13 Code sections 25205.2 and 25205.19.

14 **B. PERMIT DECISION**

15 The Facility submitted a permit application to DTSC on September 1, 2010.
16 DTSC deemed the application technically complete on November 10, 2011. DTSC
17 prepared a Draft California-Only Hazardous Waste Facility Permit and on or about
18 November 17, 2011, DTSC issued a public notice for the Draft Permit, and established
19 a public comment period from November 18, 2011, through January 9, 2012. In
20 response to a public request, DTSC extended the public comment period to
21 February 3, 2012. The public notice also announced that a public meeting to receive
22 public comments for the Draft Permit and Negative Declaration would be held at the
23 Irwindale Community Center on January 5, 2012. No member of the public attended
24 the public meeting. During this public comment period, DTSC received 30 comments
25 on the draft permit, as identified in DTSC's "Responses to Comments on the Draft
26 Hazardous Waste Facility Permit for CleanTech Environmental, Inc., 5820 Martin Road,
27 Irwindale, California 91706" (Responses to Comments), dated December 20, 2012.

28 DTSC prepared a revised Draft California-Only Hazardous Waste Facility Permit
and on or about May 17, 2012, DTSC issued a public notice for the Draft Permit, and
established a public comment period from May 18, 2012, through July 5, 2012. In the

1 public notice DTSC limited public comments to the following three changes to the
2 previous Draft Permit: 1. Clarification of the facility's category for the purpose of the
3 annual facility fee as being a small treatment facility (Draft Permit, Part II, paragraph 7);
4 2. A condition in the Permit was added to make clear that the authorized limit on the
5 amount of hazardous waste that may be treated or recycled each month is less than
6 1,000 tons (Draft Permit, Part V, paragraph 22); and, 3. Correction of Draft Permit,
7 Part III, paragraph 3, to state that a Negative Declaration had been prepared instead of
8 a Notice of Exemption. The public notice also announced that a public meeting to
9 receive public comments on the three changes to the Draft Permit and on the Negative
10 Declaration would be held at the Irwindale Community Center on June 21, 2012. No
11 member of the public attended the public meeting. During this public comment period,
12 DTSC received 32 comments on the draft permit, as identified in DTSC's "Responses to
13 Comments."

14 On December 20, 2012, DTSC issued a Notice of Final Hazardous Waste Facility
15 Permit Decision, a Responses to Comments, and the Final Permit Decision for the
16 CleanTech Environmental, Inc. facility.

17
18 **C. PERMIT APPEAL PROCESS**

19 Pursuant to California Code of Regulations, title 22, section 66271.18,
20 subdivision (a), the period for filing a petition for review (appeal) of this final Permit
21 decision ended on January 22, 2013. Three petitions for review were received from:
22 Ms. Liza Tucker, Consumer Watchdog, dated January 15, 2013; Mr. Todd Elliott,
23 Truman & Elliott LLP, dated January 17, 2013; and, Mr. Mark Gallagher, Cable
24 Gallagher Law Firm, dated January 17, 2013. On February 7, 2013, the Permit Appeals
25 Officer of the Department of Toxic Substances Control (hereinafter referred to as
26 "Department") issued a letter to Mr. Robert E. Brown III of CleanTech Environmental,
27 Inc. stating that pursuant to California Code of Regulations, title 22, section
28 66271.14(b)(2), the entire Permit was stayed until the Department completed its review

1 of the appeal. The Department's review is to determine which, if any, of the issues
2 raised in the appeal meet the criteria for review pursuant to California Code of
3 Regulations, title 22, section 66271.18.

4 5 **IV. STANDARD OF REVIEW**

6 California Code of Regulations, title 22, section 66271.18, subdivision (a),
7 provides that any person who filed comments, or participated in the public hearing, on a
8 draft permit decision, during the public comment period for the draft permit decision,
9 may petition the Department to review any condition of the final permit decision to the
10 extent that the issues raised in the petition for review were also raised during the public
11 comment period for the draft permit decision, including the public hearing. In addition,
12 any person who did not file comments or participate in the public hearing on the draft
13 permit may petition the Department for review of the final permit decision, but only with
14 respect to those changes in the final permit decision from the draft permit decision.

15 California Code of Regulations, title 22, section 66271.18, subdivision (a), also
16 provides, in pertinent part, that:

17
18 The petition shall include a statement of the reasons supporting that
19 review, including a demonstration that any issues being raised were raised
20 during the public comment period (including any public hearing) to the
21 extent required by these regulations and when appropriate, a showing that
22 the condition in question is based on:

- 23 (1) a finding of fact or conclusion of law which is clearly erroneous, or
- 24 (2) an exercise of discretion or an important policy consideration which
25 the Department should, in its discretion, review.

26 California Code of Regulations, title 22, section 66271.12, specifies the extent to
27 which issues are required to be raised during the public comment period for a draft
28 permit decision. Specifically, this section states that:

1 All persons, including applicants, who believe any condition of a draft
2 permit is inappropriate or that the Department's tentative decision to deny
3 an application or prepare a draft permit is inappropriate, must raise all
4 reasonably ascertainable issues and submit all reasonably available
5 arguments and factual grounds supporting their position.

6 Because Petitioners Todd Elliott and Mark Gallagher submitted comments on the
7 draft permit decision during the public comment period, Petitioners Todd Elliott and
8 Mark Gallagher have standing to petition for review of any issues raised during the
9 public comment period for the draft permit decision, as well as any issues that pertain to
10 changes from the draft to the final permit decision. Because Petitioner Liza Tucker did
11 not submit comments on the draft permit decision or participate in the public meetings,
12 Petitioner Liza Tucker only has standing to petition for review of any issues that pertain
13 to changes from the draft permit decision, issued on May 18, 2012, to the final permit
14 decision.

15 Additionally, any issues raised in the appeals that relate to the California
16 Environmental Quality Act (CEQA, Public Resources Code, section 21000 et seq.) will
17 not be addressed in this Order. CEQA provides a separate judicial appeal process to
18 resolve disputes concerning compliance with CEQA. The permit appeal process is not
19 the proper forum to raise CEQA issues, as the regulation governing permit appeals
20 provides that petitions for review may request review of permit conditions only.

21 **V. DISCUSSION AND FINDINGS**

22 The Department has reviewed the appeals and hereby responds to the
23 arguments and comments presented in the appeals. Appeal Comments have been
24 paraphrased for clarity and brevity. The Department has determined that the following
25 appeal comments filed by Petitioners meet the criteria for granting review pursuant to
26 California Code of Regulations, title 22, section 66271.18(a): comments 1-4 and 2-8 as
27 they relate to permit conditions II.7 and V.22. The Department is denying review of all
28 remaining comments because they fail to meet the criteria for granting review pursuant

1 to California Code of Regulations, title 22, section 66271.18(a) or are either related to
2 CEQA or pertain to the local land use permit process which is outside the Department's
3 permit jurisdiction. The Petitioner's Appeal Comments and the Department's responses
4 are set forth below.

5
6 **1. Petition filed by Mark T. Gallagher, Cable Gallagher Law Firm**

7 **Appeal Comment 1-1:** DTSC's administrative appeal process is fatally inconsistent
8 with CEQA.

9 DTSC's administrative appeal process has two fundamental flaws: (1) it purports
10 to limit the issues petitioners can raise to issues that were raised during the initial public
11 comment period; and (2) as interpreted by DTSC, it prohibits petitioners from raising
12 CEQA arguments at all. Both of these alleged limitations on the appeal process
13 fundamentally conflict with CEQA and illegally limit public participation. CEQA permits
14 comments by any person at any time before the close of public hearing prior to issuance
15 of the notice of determination. The decision on the Permit is not final until the petition
16 for review has been decided. DTSC has not yet issued a notice of determination for the
17 Project. So comments submitted during the administrative appeal process are timely,
18 and DTSC must accept them under CEQA.

19 CEQA and the cases interpreting it are clear that comments an agency receives
20 after the formal public comment period must be considered and preserve issues for
21 future litigation. Thus, under CEQA, (1) any person may comment on any issue until
22 DTSC makes a final permit decision and files a notice of determination, and (2) issues
23 raised in comments submitted to DTSC before then satisfy the issue-exhaustion
24 doctrine and preserve issues for litigation.

25 In fact, DTSC's process has impermissibly chilled the appeal process and
26 illegally limited the ability of commenters to provide comments regarding the
27 environmental impacts of the Facility. As such, DTSC should restart the process and
28

1 make clear that commenters may provide any comments on the potential environmental
2 impacts of the Facility.

3 **Response to Appeal Comment 1-1:** This Appeal Comment does not request review
4 of a condition of the permit. Further, this Appeal Comment appears to pertain to the
5 CEQA process for this project. CEQA provides a separate judicial appeal process to
6 resolve disputes concerning compliance with CEQA. The Department finds that
7 Petitioner has failed to meet the burden to establish that the Department should grant a
8 review of this issue pursuant to the criteria set forth in California Code of Regulations,
9 title 22, section 66271.18(a). For these reasons, the Department denies the petition for
10 review of the issues raised in this Appeal Comment.

11 **Appeal Comment 1-2:** The appeal process shows that DTSC is fundamentally
12 mistaken about the purpose of CEQA.

13 Aside from being illegal, DTSC's attempt to prevent the appeal process from
14 encompassing CEQA arguments demonstrates a fundamental misconception about the
15 purpose of CEQA. CEQA is not merely "a set of technical hurdles for agencies and
16 developers to overcome." Rather, the basic purposes of CEQA are to "inform
17 governmental decision makers and the public about the potential, significant
18 environmental effects of proposed activities," "identify ways that environmental damage
19 can be avoided or significantly reduced," "prevent significant, avoidable damage to the
20 environment by requiring" feasible mitigation measures or alternatives, and "disclose to
21 the public the reasons why a governmental agency approved the project in the manner
22 the agency chose."

23 To that end, approval of a project cannot be artificially severed from
24 environmental review, as DTSC proposes in its administrative appeal process. To the
25 contrary, courts have held that environmental review under CEQA must be part of and
26 inform the project-approval process. As a matter of policy and legal structure, it is vitally
27 important for DTSC to consider and address CEQA issues raised before the final close
28 of public hearing prior to the issuance of the notice of determination.

1 **Response to Appeal Comment 1-2:** This Appeal Comment does not request review
2 of a condition of the permit. Further, this Appeal Comment appears to pertain to the
3 CEQA process for this project. CEQA provides a separate judicial appeal process to
4 resolve disputes concerning compliance with CEQA. The Department finds that
5 Petitioner has failed to meet the burden to establish that the Department should grant a
6 review of this issue pursuant to the criteria set forth in California Code of Regulations,
7 title 22, section 66271.18(a). For these reasons, the Department denies the petition for
8 review of the issues raised in this Appeal Comment.

9 **Appeal Comment 1-3:** DTSC's illegal attempt to artificially sever CEQA review from
10 the appeal process prejudices the public.

11 DTSC's interpretation of its administrative appeal regulations effectively attempts
12 to preclude CEQA lawsuits challenging DTSC's decisions-insulating DTSC's actions
13 from the judicial oversight that makes CEQA such a powerful and effective force for
14 environmental protection. DTSC's regulations require the filing of and decision on a
15 petition to review a permit decision as prerequisites for judicial review. An
16 administrative petition is thus arguably an administrative remedy that petitioners must
17 exhaust before bringing a CEQA lawsuit. But DTSC does not allow a petitioner to raise
18 CEQA issues during an administrative appeal.

19 Community members concerned with the environmental impacts of DTSC's
20 decision are thus caught in a Catch-22. They arguably must raise CEQA issues in an
21 administrative appeal to preserve them for judicial review, but DTSC will not consider
22 CEQA issues they raise in an administrative appeal. Accordingly, DTSC's
23 administrative process, which attempts to limit the scope of comments during
24 administrative appeals, is fundamentally inconsistent with CEQA and illegal.

25 DTSC's administrative appeal process is fundamentally flawed. DTSC must
26 accept and consider all CEQA arguments raised in this petition. In addition, DTSC must
27 notify the affected public that final approval of the Project has not occurred and that,
28 pursuant to CEQA, additional comments that are submitted (by any party on any

1 environmental issue) before a final decision will become part of the administrative
2 record.

3 **Response to Appeal Comment 1-3:** This Appeal Comment does not request review
4 of a condition of the permit. Further, this Appeal Comment appears to pertain to the
5 CEQA process for this project. CEQA provides a separate judicial appeal process to
6 resolve disputes concerning compliance with CEQA. The Department finds that
7 Petitioner has failed to meet the burden to establish that the Department should grant a
8 review of this issue pursuant to the criteria set forth in California Code of Regulations,
9 title 22, section 66271.18(a). For these reasons, the Department denies the petition for
10 review of the issues raised in this Appeal Comment.

11 **Appeal Comment 1-4:** CEQA specifically requires an EIR for large treatment facilities
12 like the Project.

13 State law recognizes that hazardous waste facilities are particularly prone to
14 causing significant environmental impacts and have special need for thorough
15 environmental review that can only be provided through an EIR. CEQA thus explicitly
16 requires an EIR for the "initial issuance of a hazardous waste facilities permit" for an
17 "offsite large treatment facility." "Offsite large treatment facility" means, "in those cases
18 in which total treatment capacity is provided in a permit, ... capacity to treat, land treat,
19 or recycle 1,000 or more tons of hazardous waste. In those cases in which it is not so
20 provided, [it] means a treatment facility that treats, land treats, or recycles 1,000 or more
21 tons of hazardous waste during anyone month of the current reporting period
22 commencing on or after July 1, 1991."

23 The Facility clearly meets the definition of "large treatment facility," and thus
24 CEQA explicitly requires an EIR. The total storage capacity of all the units at the
25 Project is 243,240 gallons or 1.79 million pounds of oil. If the Facility operates as
26 similar facilities do, then the total capacity treated would be in excess of 8,000 tons per
27 month. DTSC acknowledges that the Facility's capacity is not just the storage capacity
28

1 of the tanks, but includes the "monthly treatment and recycling throughput using the
2 authorized tanks."

3 DTSC attempted to avoid the need to prepare an EIR by adding a permit
4 condition limiting the total amount of hazardous waste the permittee is authorized to
5 treat or recycle to less than 1,000 tons a month. But there are several reasons why
6 DTSC's interpretation of state law is clearly erroneous and why this limit does not avoid
7 the need for DTSC to prepare an EIR.

8 First, State law refers to "total capacity," not "permitted capacity" or "authorized
9 capacity."

10 Second, DTSC misinterprets the first part of the statutory definition, which
11 provides that "in those cases in which total treatment capacity is provided in a permit,"
12 the classification depends on the total treatment capacity provided in the permit. DTSC
13 claims that the permit "included the individual capacity of the treatment tanks at the
14 facility, but did not provide the total treatment capacity for the facility." This is
15 erroneous. As noted in public comments, the permit did provide the Facility's treatment
16 capacity with sufficient detail to demonstrate that the Facility can readily treat more than
17 1,000 tons a month, thus requiring an EIR.

18 Third, DTSC erroneously argues that the second part of the definition of "large
19 treatment facility" is the relevant test: a facility that "treats, land treats, or recycles 1,000
20 or more tons of hazardous waste during any one month of the current reporting period."
21 But this portion of the definition of a "large treatment facility" clearly applies only to
22 plants with some operational history or previous reports of operational capacity. If
23 DTSC's interpretation was correct, therefore, no new plant, regardless of its capacity,
24 could ever qualify as a large treatment facility-because as a new plant, it would not yet
25 have made a report the quantity of hazardous waste it treated in the previous months.

26 Fourth, DTSC's reasoning conflicts with the purposes of the law, which is to
27 provide decisionmakers and the public the detailed information of an EIR-including
28 mitigation and alternatives analysis-before new hazardous waste facilities with a

1 capacity of 1,000 tons a month or more are approved. DTSC cannot avoid this
2 requirement by approving a hazardous waste facility with a capacity several times
3 greater than the threshold for "large treatment facilities" and then limiting the use of that
4 capacity with a permit condition. Once this large hazardous waste treatment facility is
5 built in this community-next to the Santa Fe Dam Recreational Area and other sensitive
6 receptors-it is too late.

7 Even if DTSC expressly committed to preparing an EIR if the Facility eventually
8 uses its full physical capacity, the purpose of state law will have already been frustrated.
9 The purpose of the EIR is to inform decisionmaking before the project and its
10 environmental effects occur, not after. "A fundamental purpose of an EIR is to provide
11 decision makers with information they can use in deciding whether to approve a
12 proposed project, not to inform them of the environmental effects of projects that they
13 have already approved. If post-approval environmental review were allowed, EIR's
14 would likely become nothing more than post hoc rationalizations to support action
15 already taken. [Courts] have expressly condemned this use of EIR's."

16 Fifth, CEQA does not permit an agency to artificially limit the environmental
17 review by purportedly prohibiting further development that may result in significant
18 environmental impacts. An agency "may not substitute a provision precluding further
19 development for identification and analysis of the project's intended and likely"
20 development and impacts.

21 Accordingly, an EIR is required for the Project. The total treatment capacity, by
22 any reasonable measure, far exceeds 1,000 tons per month. DTSC's interpretation of
23 the statute is clearly erroneous.

24 **Response to Appeal Comment 1-4:** Pursuant to the criteria set forth in California
25 Code of Regulations, title 22, section 66271.18(a) and (c), the Department is granting
26 review of the issues raised in this comment as they relate to permit conditions II.7 and
27 V.22 and the definition of "large treatment facility" pursuant to Health and Safety Code
28 section 25205.1

1 The remaining issues in the Appeal Comment do not request review of a
2 condition of the permit and appear to pertain to the CEQA process for this project.
3 CEQA provides a separate judicial appeal process to resolve disputes concerning
4 compliance with CEQA. The Department finds that Petitioner has failed to meet the
5 burden to establish that the Department should grant a review of the issues pertaining
6 to the CEQA process for this project pursuant to the criteria set forth in California Code
7 of Regulations, title 22, section 66271.18(a). For these reasons, the Department denies
8 the petition for review of the CEQA issues raised in this Appeal Comment.

9 **Appeal Comment 1-5:** A "project" includes its reasonably foreseeable consequences,
10 which includes the use of the Facility's full physical capacity.

11 The proposed permit condition limiting treatment to 1,000 tons per month is
12 irrelevant to calculating the Project's capacity. By definition, the "project" a lead agency
13 must analyze under CEQA includes "reasonably foreseeable" environmental
14 consequences of the project. The California Supreme Court specifically held that this
15 includes future expansion: environmental review "must include an analysis of the
16 environmental effects of future expansion" if "it is a reasonably foreseeable
17 consequence of the initial project." Under CEQA, therefore, the "project" DTSC must
18 analyze literally includes the project DTSC has approved, *plus* its reasonably
19 foreseeable consequences and expansion.

20 Here, the Facility's treatment of more than 1,000 tons of hazardous waste per
21 month would not even require further expansion. It would simply require a permit
22 amendment for the Applicant to use the physical capacity that DTSC has already
23 permitted. In asking DTSC to remove Special Condition 22, the Applicant essentially
24 concedes that the condition would artificially limit its use of the Facility to below its true
25 capacity and that its business plans involve using the full capacity. Indeed, it appears
26 that the Permit currently authorizes the Facility to operate at only approximately 7 to 11
27 percent of its total capacity-possibly even less. The Initial Study contains no evidence
28 or discussion regarding whether long-term operation of the Facility at this level of

1 operation is sustainable or feasible. Commenters noted that the operations of similar
2 facilities are much greater and questioned why a Facility with such a large capacity
3 would operate at such a limited proportion of its total capacity.

4 It is reasonably foreseeable, even probable in these circumstances, that the
5 Facility will seek to use its additional capacity through a permit amendment. The mere
6 fact that such an amendment would require further agency action does not insulate it
7 from environmental review now as part of the Project.

8 In sum, CEQA explicitly requires DTSC to prepare an EIR because the Facility is
9 a large treatment facility. This is true even though DTSC has conditioned the Permit to
10 artificially limit the Facility's operations to a fraction of its full physical capacity. It is
11 reasonably foreseeable that the Facility's full physical capacity will be used, and CEQA
12 requires DTSC to study the environmental consequences of this in an EIR before
13 approving the Permit.

14 **Response to Appeal Comment 1-5:** This Appeal Comment does not request review
15 of a condition of the permit. Further, this Appeal Comment appears to pertain to the
16 CEQA process for this project. CEQA provides a separate judicial appeal process to
17 resolve disputes concerning compliance with CEQA. The Department finds that
18 Petitioner has failed to meet the burden to establish that the Department should grant a
19 review of this issue pursuant to the criteria set forth in California Code of Regulations,
20 title 22, section 66271.18(a). For these reasons, the Department denies the petition for
21 review of the issues raised in this Appeal Comment.

22 **Appeal Comment 1-6:** The Negative Declaration is legally inadequate because DTSC
23 failed to analyze and mitigate impacts of the whole of the project.

24 CEQA requires the evaluation of "the whole of an action." An agency is not
25 permitted to avoid CEQA requirements by "overlooking [of a project's] cumulative
26 impact by separately focusing on isolated parts of the whole."

27 But this is exactly what DTSC does in the Initial Study-piecemeal various
28 approvals required for the Project out of the scope of environmental review. Most

1 notably, because DTSC artificially defined the project as using only a fraction of its true
2 capacity, the environmental impacts to virtually every resource were understated.

3 Operating at its true physical capacity, the Project will process more hazardous waste,
4 involve more truck trips, emit more air pollutants and greenhouse gases, cause more
5 noise, involve greater risk of an upset or spill, and generally involve greater impacts
6 than the Initial Study discloses. Because the Negative Declaration appears to analyze
7 only perhaps between 7 to 11 percent of the Facility's actual capacity, it understates
8 environmental impacts by roughly a factor of ten, and there is a fair argument that the
9 Facility will cause a significant impact.

10 In addition, the Initial Study refers to a number of future actions and permits that
11 may or will occur, but fails to analyze them. For example, the Initial Study states that, in
12 the future, the Applicant may "want to discharge into the sewer system," which would
13 require authorization from both the Irwindale Public Works Department and the
14 Los Angeles County Sanitation District. The Initial Study also vaguely refers to the use
15 of the Azusa Land Reclamation Landfill for solid waste disposal needs. The Project will
16 also require coverage under the General Industrial Stormwater Discharge Permit.
17 Public commenters requested to know the basis for DTSC's conclusions of no
18 environmental impact as to these related actions, but DTSC responded simply the
19 Applicant would be required to comply with the terms of those permits.

20 The fact that future related actions will require a separate approval does not
21 relieve DTSC from evaluating the environmental impacts of those future actions. DTSC
22 similarly ignored commenters' concerns regarding the basis for the conclusion that the
23 Azusa Landfill could accommodate the solid waste requirements of the Facility. The
24 Initial Study makes a conclusory assertion of no impact, but does not explain or provide
25 any evidence to support this conclusion. The Initial Study also fails to explain the
26 potential for the Applicant's future discharge into the local sewer system. DTSC's failure
27 to squarely address approvals that it knows must occur in the future is fatal to the
28 legality of the Negative Declaration.

1 **Response to Appeal Comment 1-6:** This Appeal Comment does not request review
2 of a condition of the permit. Further, this Appeal Comment appears to pertain to the
3 CEQA process for this project. CEQA provides a separate judicial appeal process to
4 resolve disputes concerning compliance with CEQA. The Department finds that
5 Petitioner has failed to meet the burden to establish that the Department should grant a
6 review of this issue pursuant to the criteria set forth in California Code of Regulations,
7 title 22, section 66271.18(a). For these reasons, the Department denies the petition for
8 review of the issues raised in this Appeal Comment.

9 **Appeal Comment 1-7:** The Negative Declaration is legally inadequate because DTSC
10 failed to adequately analyze and mitigate impacts related to compatibility with local
11 zoning laws and planning, and the Project may cause a significant impact related to
12 local planning and zoning laws.

13 There remain a number of unresolved inconsistencies between the Project and
14 local land use zoning and planning. Inconsistency with the General Plan may represent
15 a significant environmental impact that must be evaluated or mitigated. The General
16 Plan itself lists facilities in the City of Irwindale area that handle hazardous wastes, but
17 the Facility is not listed. A General Plan Amendment thus will be required, which
18 presumptively requires anEIR.

19 A Zoning Code Amendment and conditional use permit will also be required. The
20 Facility is sited in Irwindale's M-2 Zone for Heavy Manufacturing, and section 17.56.010
21 of the City's Municipal Code does not list hazardous waste treatment as a permitted
22 use. Moreover, the Zoning Code actually expressly prohibits the Facility, because it
23 would accept "hazardous materials, including but not limited to, automotive fluids."
24 Thus, unless the Zoning Code is amended, the Project cannot be approved. Even if the
25 Zoning Code were amended, the Facility would require a conditional use permit,
26 because it would fall under the classification of "recycling facilities" and because it
27 involves the use or storage of toxic or hazardous materials as a substantial part of the
28 total use.

1 Due to the Facility's location adjacent to Irwindale's border with the City of Azusa,
2 DTSC should have analyzed the Project's consistency with the Irwindale and Azusa
3 General Plans and any applicable habitat conservation plan or natural community
4 conservation plan regarding the Project area. In addition, the Initial Study should have
5 included consultations with the fire department and local authorities to coordinate
6 transportation of hazardous materials through Irwindale, as required by the General
7 Plan.

8 The Initial Study's analysis regarding land-use consistency was legally
9 inadequate. The Initial Study provides no substantive explanation for the determination
10 of "No Impact" to land use and planning. It makes only a conclusory assertion that
11 "construction ... will be consistent with the established industrial and commercial zoning
12 characteristics of the project site area." DTSC's responses to public comments are
13 similarly shallow, repeating excerpts from the Irwindale General Plan and declaring, "the
14 appropriate level of protection exists to minimize impacts should a spill occur." This is
15 empty analysis and does not satisfy CEQA. What is the appropriate level of protection,
16 and why do existing policies amount to this "appropriate" level?

17 DTSC also completely ignored comments noting that the Facility is not listed in
18 the Irwindale General Plan, thus requiring a General Plan Amendment. DTSC states
19 that the City of Irwindale does not consider a conditional use permit necessary, but this
20 is irrelevant as to whether a General Plan Amendment may be required or whether the
21 Facility is consistent with the various policies of the General Plan. Part of the Irwindale
22 General Plan was to identify registered hazardous waste generators and handlers in
23 Irwindale in order to facilitate coordination of transport throughout Irwindale. The
24 Facility is not one of those facilities identified by the General Plan.

25 DTSC notes that it consulted with the City of Irwindale and the City opined that
26 no discretionary local land use approvals are required for the Project. But neither the
27 City of Irwindale nor DTSC may ignore the plain language of the law. The Zoning Code
28 is clear that the Facility is prohibited within the M-2 Zone, and a conditional use permit is

1 clearly required. DTSC's characterization of the City's explanation does not appear to
2 address the clear prohibitions on hazardous waste processing in the Zoning Code and
3 the clear requirements for a permit, but merely re-characterizes (inaccurately) the
4 Facility and its use. The Facility is in no sense an "intensification" of a warehouse or
5 wholesale business. As the Permit clearly details, the Facility is an entirely new facility,
6 not "the intensification of the existing use." It is not, by any reasonable or common
7 sense interpretation, an "intensified" "warehouse, wholesale business, or storage
8 building" that is permitted by right.

9 A General Plan Amendment, Zoning Code Amendment, conditional use permit,
10 and accompanying analysis of the Project's consistency with local land use laws and
11 planning are required. As public commenters demonstrated, the Project may have
12 significant impacts related to land use and planning. DTSC must prepare an EIR to
13 analyze and mitigate the potential impacts before final approval of the Project.

14 **Response to Appeal Comment 1-7:** Land use decisions are outside the scope of the
15 jurisdiction of DTSC. The authority to determine compliance with local requirements is
16 vested in various local agencies, which are duly empowered to consider issues and
17 applications before them. This Appeal Comment does not request review of a condition
18 of the permit. Further, this Appeal Comment appears to pertain to the CEQA process
19 for this project. CEQA provides a separate judicial appeal process to resolve disputes
20 concerning compliance with CEQA. The Department finds that Petitioner has failed to
21 meet the burden to establish that the Department should grant a review of this issue
22 pursuant to the criteria set forth in California Code of Regulations, title 22, section
23 66271.18(a). For these reasons, the Department denies the petition for review of the
24 issues raised in this Appeal Comment.

25 **Appeal Comment 1-8:** The Negative Declaration and Initial Study are legally
26 inadequate because there is substantial evidence of a fair argument of significant
27 impacts to the environment.

1 An EIR is required if there is substantial evidence of a fair argument that the
2 project may have a significant effect on the environment. Public comments have
3 generated substantial evidence that the Project may result in significant environmental
4 impacts with respect to: the Santa Fe Dam Recreational Area; air quality; odors; indoor
5 air quality; cumulative impacts; noise; greenhouse gas emissions; biological resources;
6 cultural resources; geology and soils; hazardous waste transport; transportation and
7 traffic; groundwater contamination; impaired water bodies; flooding; public services;
8 and, utilities and services systems.

9 **Response to Appeal Comment 1-8:** This Appeal Comment does not request review
10 of a condition of the permit. Further, this Appeal Comment appears to pertain to the
11 CEQA process for this project. CEQA provides a separate judicial appeal process to
12 resolve disputes concerning compliance with CEQA. The Department finds that
13 Petitioner has failed to meet the burden to establish that the Department should grant a
14 review of this issue pursuant to the criteria set forth in California Code of Regulations,
15 title 22, section 66271.18(a). For these reasons, the Department denies the petition for
16 review of the issues raised in this Appeal Comment.

17 **Appeal Comment 1-9:** The Negative Declaration is legally inadequate because DTSC
18 failed to respond adequately to public comments.

19 The public comment, review, and response process is an integral part of CEQA,
20 and such comments and responses are a substantive part of the final environmental
21 review document. An agency is required to respond to the most significant
22 environmental questions. If the failure to respond has frustrated the purpose of the
23 public comment requirements, then the error is prejudicial, and the environmental
24 review is invalid under CEQA.

25 DTSC failed to respond in a serious and substantive manner to many of the
26 public's important concerns. The issues raised were not insignificant, but related to
27 fundamental flaws in the Initial Study's analysis, clearly erroneous identification and use
28 of data, clearly absent evidence to support otherwise unsubstantiated conclusions, and

1 the most serious potential environmental impacts of the Project. DTSC's incomplete
2 and vague responses were prejudicial, because they deprived the public of meaningfully
3 commenting on and evaluating the environmental impacts of the Project. This included,
4 for example: noise impacts; air quality impacts; hazardous materials and transport
5 impacts; groundwater contamination and hydrology impacts; cumulative impacts and
6 reasonably foreseeable consequences; and, the failure to provide technical reports or
7 studies to support highly technical conclusions made by the Initial Study.

8 In the end, the public was left with an environmental review document that was
9 full of unsubstantiated, conclusory assertions and bereft of substantial evidence to
10 support its conclusions. DTSC's failure to respond to comments frustrated the purpose
11 of the public comment process, which is to facilitate the identification of potentially
12 significant environmental impacts and develop alternatives and mitigation to those
13 impacts. Accordingly, DTSC's persistent refusal to respond substantively to public
14 comments was prejudicial, and DTSC must prepare an EIR, hold a new public comment
15 period, and adequately respond to comments.

16 **Response to Appeal Comment 1-9:** This Appeal Comment does not request review
17 of a condition of the permit. Further, this Appeal Comment appears to pertain to the
18 CEQA process for this project. CEQA provides a separate judicial appeal process to
19 resolve disputes concerning compliance with CEQA. The Department finds that
20 Petitioner has failed to meet the burden to establish that the Department should grant a
21 review of this issue pursuant to the criteria set forth in California Code of Regulations,
22 title 22, section 66271.18(a). For these reasons, the Department denies the petition for
23 review of the issues raised in this Appeal Comment.

24 25 **2. Petition filed by Todd Elliott, Truman & Elliott LLP**

26 **Appeal Comment 2-1:** Environmental justice.

27 We are concerned about the potentially significant environmental impacts caused
28 by the Project, and in particular the lack of consideration of environmental justice.

1 DTSC failed to properly review the Project under CEQA, and ignored the potentially
2 significant effects of the Project on the environment, putting at risk the health and safety
3 of tens, if not hundreds, of thousands of southern California residents. Most affected
4 would be minority populations in the area, including poor and working class Latino
5 communities. Irwindale, the municipality where the Project is proposed is over 88%
6 Latino. As stated by the California Attorney General in a Legal Background report on
7 Environmental Justice: "The benefits of a healthy environment should be available to
8 everyone, and the burdens of pollution should not be focused on sensitive populations
9 or on communities that already are experiencing its adverse effects." (Office of the
10 Attorney General, California Dept. of Justice, Environmental Justice at the Local and
11 Regional Level (2012) p. 1.)

12 DTSC's action in issuing a permit for a hazardous waste facility on
13 December 20, 2012, just before the Christmas holiday celebrated by so many of the
14 area's Latino residents, smacks of environmental injustice. The lives of our clients, who
15 are underserved and poor, and many of whom do not speak English will be forever
16 altered if a large hazardous waste facility is allowed to be constructed at 5820 Martin
17 Road.

18 **Response to Appeal Comment 2-1:** This Appeal Comment does not request review of
19 a condition of the permit. Also, the issue of environmental justice was not raised during
20 the public comment period. Further, this Appeal Comment appears to pertain to the
21 CEQA process for this project. CEQA provides a separate judicial appeal process to
22 resolve disputes concerning compliance with CEQA. The Department finds that
23 Petitioner has failed to meet the burden to establish that the Department should grant a
24 review of this issue pursuant to the criteria set forth in California Code of Regulations,
25 title 22, section 66271.18(a). For these reasons, the Department denies the petition for
26 review of the issues raised in this Appeal Comment.
27
28

1 **Appeal Comment 2-2:** Appeal process inconsistent with CEQA.

2 DTSC cannot limit the issues people raise in an appeal, or in public comments
3 before final approval of the Project. CEQA allows any member of the public to comment
4 on any issue until the final decision on a project. (Galante Vineyards v. Monterey
5 Peninsula Water Mgmt. Dist. (1997) 60 Cal.App.4th 1109, 1121 (CEQA allows "any
6 alleged grounds for noncompliance with CEQA provisions may be raised by any person
7 prior to the close of the public hearing on the project before the issuance of the notice of
8 determination.").

9 **Response to Appeal Comment 2-2:** This Appeal Comment does not request review
10 of a condition of the permit. Further, this Appeal Comment appears to pertain to the
11 CEQA process for this project. CEQA provides a separate judicial appeal process to
12 resolve disputes concerning compliance with CEQA. The Department finds that
13 Petitioner has failed to meet the burden to establish that the Department should grant a
14 review of this issue pursuant to the criteria set forth in California Code of Regulations,
15 title 22, section 66271.18(a). For these reasons, the Department denies the petition for
16 review of the issues raised in this Appeal Comment.

17 **Appeal Comment 2-3:** Geology and Soils.

18 There is a confluence of earthquake faults in the Project area, which is highly
19 unusual. Nine separate faults are located within 30 miles of Irwindale, as referenced in
20 Irwindale's 2008 General Plan at page 130. Five active earthquake faults are located
21 within 3.5 miles of the city's core, which covers only 8.8 square miles in land mass.
22 Furthermore, the Duarte fault (Segment D of the Sierra Madre Fault) runs through the
23 entire city. Segment E of the Sierra Madre Fault meets up with several other faults in a
24 complex zone northwest of the town of Upland near the epicenter of the 1990 Upland
25 earthquake. The general trend of the Sierra Madre Fault Zone continues eastward from
26 this point along the base of the San Gabriel Mountain, but this eastern continuation is
27 known as the Cucamonga Fault Zone. The Cucamonga Fault Zone seems to be more
28 active (has a higher slip rate) than the Sierra Madre Fault Zone. While rupture on the

1 Sierra Madre Fault Zone could be limited to one segment at a time, it has recently been
2 suggested by seismologists studying this area that a large event on the San Andreas
3 fault to the north could cause simultaneous rupture on reverse faults south of the San
4 Gabriel Mountains -- the Sierra Madre Fault Zone being a prime example of such.
5 (Southern California Earthquake Data Center, Sierra Madre Fault Zone, California
6 Institute of Technology <<http://www.data.scec.org/significantsierramadre.html>> [as of
7 January 10, 2012].)

8 Further, the California State Department of Conservation, in its official maps,
9 identifies a body of water less than 2,000 linear feet from the proposed Project site. The
10 state of California State Geologist labels the body of water and other areas around it as
11 potential areas for: Earthquake Induced Landslides: Areas where previous occurrence
12 of landslide movement, or local topographic, geological, geotechnical, and subsurface
13 water conditions indicate a potential for permanent ground displacements such that
14 mitigation as defined in Public Resources Code Section 2693(c) would be required.

15 The United States Geological Service estimates an 87.3% probability of an
16 earthquake of greater than 6.0 magnitude occurring within 31 miles of the subject site.
17 (U.S.G.S. 2009 Probability Earthquake Mapping.)

18 Given the confluence of faults that exist within and surrounding the subject site
19 and given that the State Department of Conservation has identified a water body less
20 than 2,000 feet from the Project site situated on land where previous landslide
21 movement occurred, it would be impossible for the DTSC not to determine the Project
22 has the potential to expose people or structures to a significant risk of loss, injury or
23 death involving flooding, including flooding as result of the failure of a levee or dam.
24 Should such a large earthquake occur, it could have disastrous consequences on the
25 local population due to a spill from the Project site. CEQA demands that a Lead Agency
26 conduct an independent review of a proposed project's impacts. (CEQA Guidelines, §§
27 15020, 15064.) Geology and soils, the potential for earthquakes, and potential flooding
28

1 were not properly studied by DTSC and DTSC erred in concluding the Project would not
2 have significant effects on the environment.

3 In addition, as noted in our previous comments, DTSC relies on improper and
4 legally inadequate sources-particularly, mere statements by the applicant-for its analysis
5 of geology and soils.

6 **Response to Appeal Comment 2-3:** This Appeal Comment does not request review
7 of a condition of the permit. Further, this Appeal Comment appears to pertain to the
8 CEQA process for this project. CEQA provides a separate judicial appeal process to
9 resolve disputes concerning compliance with CEQA. The Department finds that
10 Petitioner has failed to meet the burden to establish that the Department should grant a
11 review of this issue pursuant to the criteria set forth in California Code of Regulations,
12 title 22, section 66271.18(a). For these reasons, the Department denies the petition for
13 review of the issues raised in this Appeal Comment.

14 **Appeal Comment 2-4:** Recreation/Hazards and Hazardous Materials

15 Additionally, within hundreds of feet from the Project site is the Santa Fe Dam
16 Recreation Area, a county park and designated county Significant Ecological Area,
17 located in Irwindale. The park is maintained and operated by the Los Angeles County
18 Department of Parks and Recreation. The park, located off the San Gabriel River
19 Freeway (I-60S), contains a 70-acre lake for year-round fishing and non-motorized
20 watercraft.

21 The dam is a popular tourist attraction as visitors are afforded a view of the San
22 Gabriel Mountains and recreational activities at the park include swimming, fishing,
23 boating, cycling, birdwatching, and hiking. Fish found in the lake include largemouth
24 bass, bluegills, crappie and carp. Should an accident occur at the Project site, or with a
25 truck loaded with hazardous waste travelling to the Project site, and hazardous waste
26 spill or leach into the ground, the Santa Fe Dam Recreation Area would be detrimentally
27 affected and tens of thousands residents affected by this act. CEQ A demands that a
28 Lead Agency conduct an independent review of a proposed project's impacts. (CEQA

1 Guidelines, §§ 15020, 15064.) This issue was not properly studied by DTSC and DTSC
2 erred in concluding the Project would not have significant effects on the environment.

3 **Response to Appeal Comment 2-4:** This Appeal Comment does not request review
4 of a condition of the permit. Further, this Appeal Comment appears to pertain to the
5 CEQA process for this project. CEQA provides a separate judicial appeal process to
6 resolve disputes concerning compliance with CEQA. The Department finds that
7 Petitioner has failed to meet the burden to establish that the Department should grant a
8 review of this issue pursuant to the criteria set forth in California Code of Regulations,
9 title 22, section 66271.18(a). For these reasons, the Department denies the petition for
10 review of the issues raised in this Appeal Comment.

11 **Appeal Comment 2-5:** Biological Resources

12 In addition, some of the rarest plants and wildlife are found in the Santa Fe
13 Recreation Area and river fan, including the alluvial fan sage scrub, cactus wrens,
14 California gnatcatchers, scissor-tail flycatchers, homed lizards and kangaroo rats. The
15 alluvial fan sage scrub is among the rarest and last of its kind in Los Angeles County.
16 In addition, cactus wrens, California gnatcatchers, scissor-tail flycatchers, homed lizards
17 and kangaroo rats are all rare and endangered species. The effect of the Project on
18 these endangered species was not properly studied by DTSC and DTSC erred in
19 concluding the Project would not have significant effects on the environment.

20 The result of an accident at the Project site would have far reaching
21 consequences, potentially polluting the water system in the surrounding area as well as
22 damaging the rare ecosystem found in the Santa Fe Dam Recreation Area, which
23 includes not only rare plants but endangered species.

24 Undoubtedly, the Project has the potential to degrade the quality of the
25 environment, substantially reduce the habitat of fish or wildlife species, cause a fish or
26 wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or
27 animal community, or reduce the number or restrict the range of a rare or endangered
28 plant or animal species.

1 The failure to prepare an environmental impact report to disclose, analyze, and
2 mitigate the potential impacts of the proposed CleanTech Hazardous Waste Facility on
3 the greater Los Angeles environment could result in the carrying out of a project that
4 may cause irreparable harm to the citizenry of Los Angeles County. CEQA demands
5 that DTSC conduct an independent review of a proposed project's impacts. (CEQA
6 Guidelines, §§ 15020, 15064.)

7 **Response to Appeal Comment 2-5:** This Appeal Comment does not request review
8 of a condition of the permit. Further, this Appeal Comment appears to pertain to the
9 CEQA process for this project. CEQA provides a separate judicial appeal process to
10 resolve disputes concerning compliance with CEQA. The Department finds that
11 Petitioner has failed to meet the burden to establish that the Department should grant a
12 review of this issue pursuant to the criteria set forth in California Code of Regulations,
13 title 22, section 66271.18(a). For these reasons, the Department denies the petition for
14 review of the issues raised in this Appeal Comment.

15 **Appeal Comment 2-6:** Environmental Justice

16 Local governments and state agencies, such as DTSC, have an obligation to
17 consider environmental justice issues when approving specific projects. "Environmental
18 justice" is defined in the Government Code as "the fair treatment of people of all races,
19 cultures, and incomes with respect to the development, adoption, implementation, and
20 enforcement of environmental laws, regulations, and policies." (Gov. Code, § 65040.12,
21 subd. (e).) Lead agencies are required to consider the public health burdens of a
22 project as they relate to environmental justice for certain communities. The Initial Study
23 does not acknowledge this issue nor does the Negative Declaration consider
24 environmental justice in violation of CEQA.

25 Here, the Project is being thrust upon a largely Latino community without proper
26 notice or communication with the community. Much of the surrounding community does
27 not understand English, and very few understand CEQA or the environmental impacts
28 of the Project. While the Fact Sheet may have been in Spanish, the Initial Study was

1 not published in Spanish, creating a significant information gap in the environmental
2 review process. This limited public review and included only a very small portion of the
3 community, effectively defeating CEQA's "informational purpose". To remedy this
4 deficiency, DTSC should 1) re-circulate the Initial Study in Spanish for public review; 2)
5 hold a public hearing on the issue in both English and Spanish for the community to
6 understand the effects of this Project; and 3) prepare an environmental impact report
7 and provide a Spanish translation. Allowing this Project to go forward as approved
8 would subject tens, if not hundreds, of thousands of underserved citizens to the effects
9 of a Project they do not know about.

10 **Response to Appeal Comment 2-6:** This Appeal Comment was not raised during the
11 public comment period. The Department notes there was no attendance at either public
12 meeting, even though the public notices were issued and publicized in Spanish and
13 Spanish-language contacts at DTSC were provided in the public notices. This Appeal
14 Comment does not request review of a condition of the permit. Further, this Appeal
15 Comment appears to pertain to the CEQA process for this project. CEQA provides a
16 separate judicial appeal process to resolve disputes concerning compliance with CEQA.
17 The Department finds that Petitioner has failed to meet the burden to establish that the
18 Department should grant a review of this issue pursuant to the criteria set forth in
19 California Code of Regulations, title 22, section 66271.18(a). For these reasons, the
20 Department denies the petition for review of the issues raised in this Appeal Comment.

21 **Appeal Comment 2-7:** Other Environmental Issues

22 We submitted a report by Karen Ruggels, an environmental expert and Principal
23 of KLR Planning, with our July 5, 2012 letter. The letter contained a detailed critique of
24 the CEQA review for the Project, but DTSC has not adequately addressed any of the
25 comments in that report. It is attached hereto as Exhibit 5 and incorporated herein by
26 reference. As described more fully in the Ruggels report and in other public comments,
27 DTSC's CEQA analysis is inadequate because it fails to properly analyze and mitigate
28 the following issues:

- 1 • The Project may have significant air quality impacts, including impacts related
2 to odors, indoor air quality affecting working, and nearby sensitive receptors
3 including nursing homes, schools, and daycares near the Project. The air
4 quality analysis is opaque and appears to use the wrong localized
5 significance thresholds, incorrectly finding that the Project will not have an
6 impact.
- 7 • The Project may have significant land use impacts and requires a General
8 Plan Amendment, Zoning Code amendment, and Major Use Permit by the
9 City of Irwindale.
- 10 • There is no analysis of cumulative impacts, even though there are numerous
11 other hazardous waste sites nearby.
- 12 • The Project will increase noise in an already noisy area, and may cause a
13 significant impact. There is no substantive analysis of this impact.
- 14 • The Project will increase greenhouse gas emissions and may have a
15 significant impact, particularly if used oil from the Project is burned as fuel.
- 16 • The Initial Study admits that "project activity could unearth previously
17 unknown human remains." But there is no analysis of or mitigation for this
18 potentially significant impact to cultural resources.
- 19 • There is no substantive analysis or mitigation related hazardous waste
20 transport. This is particularly important as this Project will create a new
21 source of large trucks carrying hazardous waste in the community, and it is
22 reasonably foreseeable that an accident could occur, spilling hazardous
23 waste in the community.
- 24 • The Project may contaminate groundwater, causing a significant impact. The
25 Main San Gabriel Basin Watermaster recognized this, and asked DTSC to
26 impose mitigation.
- 27 • In addition, the Project site may be subject to floods, and may contaminate
28 nearby impaired water bodies, causing a significant impact.

- The Project may have significant impacts related to public services (e.g., fire and police) and utilities and service systems (stormwater discharges and solid waste disposal). DTSC must analyze all of the reasonably foreseeable consequences of the Project, including use of its full capacity and use of public services.

Response to Appeal Comment 2-7: This Appeal Comment does not request review of a condition of the permit. Further, this Appeal Comment appears to pertain to the CEQA process for this project. CEQA provides a separate judicial appeal process to resolve disputes concerning compliance with CEQA. The Department finds that Petitioner has failed to meet the burden to establish that the Department should grant a review of this issue pursuant to the criteria set forth in California Code of Regulations, title 22, section 66271.18(a). For these reasons, the Department denies the petition for review of the issues raised in this Appeal Comment.

Appeal Comment 2-8: CEQA Explicitly Mandates an EIR for a Large Treatment Facility Like the Project.

Nearly all of DTSC's responses to comments were so cursory and opaque that they frustrated public participation and violate CEQA. Below, we provide responses to DTSC's "Responses to Comment" on our July 5, 2012 letter. These responses show how DTSC erred pursuant to Code of Regulations, title 22, Section 66271.18, subd.(a). The issues discussed below were all raised during the public comment period.

Specifically, as described in our July 5, 2012 letter, and as discussed further below, the Project clearly qualifies as a "large treatment facility" and CEQA specifically requires DTSC to prepare an environmental impact report.

Response to Comments:

1. We requested DTSC prepare an EIR based on the capacity of the proposed Project. It is clear the proposed Project, a "hazardous waste facility", has the capacity to treat, land treat or recycle significantly more than 1,000 tons of hazardous waste during anyone month period. The sheer size of the facility and the proposed size of the

1 numerous storage tanks make clear that the proposed CleanTech facility has the
2 capacity to treat more than 1,000 tons per month. DTSC and CleanTech's attempt to
3 avoid preparing an EIR pursuant to Public Resources Code section 21151.1(a)(3), as a
4 large treatment facility is erroneous and defeats the purpose of CEQA. Because the
5 total capacity of the units at the Project described in the draft permit is 243,240 gallons,
6 based on a specific gravity of 0.88, a gallon of oil weighs 7.34 pounds, the Project can
7 hold over 1.7 million pounds of used oil (7.34 multiplied by 243,240). The Project must
8 be categorized as a large treatment facility.

9 Allowing this proposed Project to be approved is a violation of DTSC's trust to our
10 citizens and in particular the Los Angeles County residents whose health and safety will
11 be affected by this Project. Special Condition 22 does not alter the fact the facility has
12 the capacity to treat more than 1,000 tons of hazardous waste per month. Condition 22
13 does not limit the capacity of the Project to treat less than 1,000 tons per month. The
14 fact that the proposed Project has the capacity to treat over 1,000 tons per month,
15 whether or not that amount is disclosed makes the facility a large treatment facility as
16 defined by Health and Safety Code Section 25205.1 (d). DTSC's determination the
17 Project is not a large treatment facility is an erroneous finding of fact. DTSC' s
18 determination not to prepare an environmental impact report for this Project is an
19 erroneous conclusion of law.

20 2. We requested DTSC prepare an environmental impact report based on the
21 capacity of the proposed Project. DTSC' s response regarding how much hazardous
22 waste is actually treated or recycled is irrelevant pursuant to the language of Health and
23 Safety Code section 25205.1(d). The only relevant factor is the physical capacity of the
24 treatment facility. As indicated above, based on the proposed size of the tanks for the
25 Project, there is no reasonable conclusion that the Project has a capacity to treat, land
26 treat or recycle less than 1,000 tons per month. To argue otherwise would be to
27 disavow DTSC's duty to protect the environment, businesses and residents in Irwindale
28

1 and surrounding Los Angeles County. Relying on Condition 22 to exempt the Project
2 from Public Resources Code section 21151.1 (a)(3) is an erroneous conclusion of law.

3 3. DTSC has incorrectly interpreted the ruling in Vineyard Area Citizens for
4 Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412,444. The
5 Rancho Cordova case, while discussing mitigation measures as conditions of approval,
6 is not strictly applicable to mitigation measures. Instead, Rancho Cordova requires that
7 any condition of approval which limits the scope of the project to something less than
8 full available capacity cannot limit the environmental review to that condition.

9 Accordingly, DTSC erred in not preparing an EIR for a project which has the capacity to
10 treat, land treat or recycle 1,000 or more tons per month. The Project is not in
11 compliance with CEQA and therefore the conclusion in Condition 3 is clearly erroneous.

12 4 DTSC does not negate that the capacity of the proposed Project is greater than
13 1,000 tons. Accordingly, with an approved facility capable of treating more than 1,000
14 tons per month, any reasonable person would conclude it is foreseeable that CleanTech
15 will request an expansion in the amount of hazardous waste it can treat in the near
16 future. It flies in the face of reason that a business would construct the Project with the
17 intent of using only a small fraction of its capacity. DTSC's Permit Condition 22 is
18 tantamount to building a 7-terminal airport and limiting airline traffic to one terminal. In
19 fact, Robert E. Brown III, representative for CleanTech, drafted a letter to DTSC in
20 which he argued against the imposition of Condition 22 and requested the removal of
21 Condition 22 from the permit, which limits the amount of used oil CleanTech can treat
22 and/or recycle in one month. (See Responses to Comment, Comment #11-7-4, p. 72.)
23 The only reason to oppose this condition would be to allow for the right to treat more
24 than the 1,000 ton limit per month. This comment clearly shows CleanTech's intent and
25 desire to treat more than 1,000 tons per month. To treat the excess capacity as if it
26 does not exist violates existing case law, CEQA, and reason. DTSC's failure to
27 respond to our comment shows a wanton disregard for California law and for the health
28

1 and safety of southern California citizens. Accordingly, DTSC's decision is an
2 erroneous conclusion of law.

3 **Response to Appeal Comment 2-8:** Pursuant to the criteria set forth in California
4 Code of Regulations, title 22, section 66271.18(a) and (c), the Department is granting
5 review of the issues raised in this comment as they relate to permit conditions II.7 and
6 V.22 and the definition of "large treatment facility" pursuant to Health and Safety Code
7 section 25205.1.

8 The remaining issues in the Appeal Comment do not request review of a
9 condition of the permit and appear to pertain to the CEQA process for this project.
10 CEQA provides a separate judicial appeal process to resolve disputes concerning
11 compliance with CEQA. The Department finds that Petitioner has failed to meet the
12 burden to establish that the Department should grant a review of those issues pursuant
13 to the criteria set forth in California Code of Regulations, title 22, section 66271.18(a).
14 For these reasons, the Department denies the petition for review of the issues related to
15 CEQA raised in this Appeal Comment.

16 **Appeal Comment 2-9:** Response to Comments

17 5. The failure of DTSC to consider substantial evidence providing a fair argument
18 that the Project may have a significant effect on the environment will only hurt the
19 citizens of this County through additional health risks and/or wasted tax dollars. DTSC
20 has been provided substantial evidence in the form of expert analysis indicating the
21 Project will cause substantial environmental impacts, however, DTSC's conclusion is a
22 clearly erroneous one in violation of CEQA Guidelines section 15384.

23 7. CEQA requires the preparation of an EIR where "there is substantial evidence, in
24 light of the whole record before a lead agency, that a project may have a significant
25 effect on the environment." (CEQA Guidelines § 15064, subd. (a)(l).) Failure to do so is
26 a clear breach of DTSC's obligations under CEQA. Substantial evidence has been
27 provided to DTSC in the form of expert analysis that the Project may have a significant
28

1 effect on the environment. Accordingly, DTSC must find or conclude that an EIR is
2 required for the Project; any contrary legal determination is clearly erroneous.

3 **Response to Appeal Comment 2-9:** This Appeal Comment does not request review
4 of a condition of the permit. Further, this Appeal Comment appears to pertain to the
5 CEQA process for this project. CEQA provides a separate judicial appeal process to
6 resolve disputes concerning compliance with CEQA. The Department finds that
7 Petitioner has failed to meet the burden to establish that the Department should grant a
8 review of this issue pursuant to the criteria set forth in California Code of Regulations,
9 title 22, section 66271.18(a). For these reasons, the Department denies the petition for
10 review of the issues raised in this Appeal Comment.

11 **Appeal Comment 2-10:** Response to Comments

12 6. DTSC, having added additional conditions to the Hazardous Waste Facility
13 Permit, among other things, should have issued a new comment period. In considering
14 a Project of this magnitude, DTSC should err on the side of caution and make sure the
15 entire public is informed about this Project. Limiting comments on the proposed
16 Negative Declaration and Initial Study is inappropriate and improper. Accordingly
17 DTSC's exercise of discretion violates the very mandate of CEQA to inform the general
18 public. (CEQA Guidelines, § 15002.)

19 **Response to Appeal Comment 2-10:** This Appeal Comment does not request review
20 of a condition of the permit. Further, this Appeal Comment appears to pertain to the
21 CEQA process for this project. CEQA provides a separate judicial appeal process to
22 resolve disputes concerning compliance with CEQA. The Department finds that
23 Petitioner has failed to meet the burden to establish that the Department should grant a
24 review of this issue pursuant to the criteria set forth in California Code of Regulations,
25 title 22, section 66271.18(a). For these reasons, the Department denies the petition for
26 review of the issues raised in this Appeal Comment.

1 **3. Petition filed by Liza Tucker, Consumer WatchDog**

2 **Appeal Comment 3-1:** Over the quiet holiday period, your department shockingly
3 issued a permit authorizing Agritec International Ltd. to build and operate a new
4 CleanTech Environmental hazardous waste facility in their midst without an
5 Environmental Impact Report (EIR) as required by the California Environmental Quality
6 Act (CEQA) and, more importantly, common sense.

7 This action only serves to reinforce a pattern we have observed: Your
8 department essentially clears companies of any potential for toxic harm by loosely
9 issuing Negative Declarations on a routine basis without first performing the necessary
10 in depth Environmental Impact Reports the law and CEQA require for such large-scale
11 facilities. That's because if you performed the EIRs, they would surely demonstrate that
12 the environmental detriments far outweigh the benefits. What is even more amazing is
13 that CEQA requires an EIR for large-scale hazardous waste facilities such as this, and
14 your department has blindly refused to comply with this requirement. The owner of the
15 proposed facility admits it is a large-scale facility and your office ignores the admission.
16 This is a complete abdication of your responsibility at an agency whose mission is to
17 protect communities and the environment.

18 The sleight of hand the department used to try to avoid an in-depth EIR was to
19 "limit" the company to recycling or treating no more than 1,000 tons of hazardous waste
20 a month in its permit and thus to call it a small-scale, rather than large-scale, facility.
21 That is legally indefensible. The facility will be built to process as much as 8,000 tons of
22 hazardous waste or more a month. Legal precedent shows that the physical size of a
23 facility and not the capacity it utilizes determines the requirement for an EIR. And it's
24 simply not believable that the company will stick to using only a fraction of the facility's
25 capacity. In fact, the company has made a sizeable investment and so is sure to utilize
26 this capacity, knowing that the DTSC will look the other way when it does. Moreover,
27 CEQA requires the environmental analysis to examine what is reasonably foreseeable.
28 The company's own plans and letters make it clear that the facility is a large-scale

1 hazardous waste facility. An examination of the fully-built facility processing 8,000 tons
2 is what is required.

3 **Response to Appeal Comment 3-1:** Because Petitioner Liza Tucker did not submit
4 comments on the draft permit decision or participate in the public meetings, Petitioner
5 Liza Tucker only has standing to petition for review of any issues that pertain to
6 changes from the draft permit decision, issued on May 18, 2012, to the final permit
7 decision. This Appeal Comment pertains to permit conditions II.7 and V.22 which did
8 not change from the draft permit decision, issued on May 18, 2012, to the final permit
9 decision.

10 Further, to the extent this Appeal Comment pertains to the CEQA process for this
11 project; CEQA provides a separate judicial appeal process to resolve disputes
12 concerning compliance with CEQA. The Department finds that Petitioner has failed to
13 meet the burden to establish that the Department should grant a review of this issue
14 pursuant to the criteria set forth in California Code of Regulations, title 22, section
15 66271.18(a). For these reasons, the Department denies the petition for review of the
16 issues raised in this Appeal Comment.

17 **Appeal Comment 3-2:** This permit blatantly disregards the legal requirements of the
18 California Environmental Quality Act (CEQA) and is a display of disrespect, once again,
19 to working class, largely minority communities that have a right to expect your
20 department to protect their community and the environment from toxic harm.

21 **Response to Appeal Comment 3-2:** Because Petitioner Liza Tucker did not submit
22 comments on the draft permit decision or participate in the public meetings, Petitioner
23 Liza Tucker only has standing to petition for review of any issues that pertain to
24 changes from the draft permit decision, issued on May 18, 2012, to the final permit
25 decision. This Appeal Comment does not pertain to changes from the draft permit
26 decision, issued on May 18, 2012, to the final permit decision.

27 This Appeal Comment does not request review of a condition of the permit. Also,
28 the issue of environmental justice was not raised during the public comment period.

1 Further, this Appeal Comment appears to pertain to the CEQA process for this project.
2 CEQA provides a separate judicial appeal process to resolve disputes concerning
3 compliance with CEQA. The Department finds that Petitioner has failed to meet the
4 burden to establish that the Department should grant a review of this issue pursuant to
5 the criteria set forth in California Code of Regulations, title 22, section 66271.18(a). For
6 these reasons, the Department denies the petition for review of the issues raised in this
7 Appeal Comment.

8 **Appeal Comment 3-3:** Toxins already surround residents of the San Gabriel Valley in
9 and around Irwindale. At least a dozen EPA-regulated facilities that already generate,
10 transport, treat, store or dispose of hazardous waste stand within 300 feet of this project
11 location. But the DTSC has not studied the cumulative impacts of this project on
12 Irwindale or nearby cities. Los Angeles County has already identified the Santa Fe Dam
13 Recreational Area, a regional bright spot, as a significant ecological area. This facility
14 will be located right next to this sanctuary for both protected species and people who
15 like to swim, hike, and fish. Your initial Negative Declaration originally did not even
16 mention this fact. Moreover, the facility will be built within half a mile of daycare centers,
17 and within a few miles of schools and homes for the elderly. People will have to live
18 with this facility and the trucks that deliver toxic waste to the facility every day.

19 The DTSC says this project will not cause harm without sufficient examination of
20 the numerous factors the Initial Study should have covered. They include the potential
21 for hazardous waste spills at the facility or during transportation of hazardous waste to
22 and from the facility, the potential for contamination of soil, water or air and measures to
23 mitigate these risks, increased traffic and noise pollution, harm to wildlife, and the risks
24 and effects of flooding.

25 **Response to Appeal Comment 3-3:** Because Petitioner Liza Tucker did not submit
26 comments on the draft permit decision or participate in the public meetings, Petitioner
27 Liza Tucker only has standing to petition for review of any issues that pertain to
28 changes from the draft permit decision, issued on May 18, 2012, to the final permit

1 decision. This Appeal Comment does not pertain to changes from the draft permit
2 decision, issued on May 18, 2012, to the final permit decision.

3 This Appeal Comment does not request review of a condition of the permit.
4 Further, this Appeal Comment appears to pertain to the CEQA process for this project.
5 CEQA provides a separate judicial appeal process to resolve disputes concerning
6 compliance with CEQA. The Department finds that Petitioner has failed to meet the
7 burden to establish that the Department should grant a review of this issue pursuant to
8 the criteria set forth in California Code of Regulations, title 22, section 66271.18(a). For
9 these reasons, the Department denies the petition for review of the issues raised in this
10 Appeal Comment.

11 **Appeal Comment 3-4:** Moreover, you do not mention the history of CleanTech
12 Environmental whose record does not inspire confidence in a safe operation.
13 CleanTech is currently the third largest collector of used oil in California and the second
14 largest provider of part washers in California with a facility in Fresno and corporate
15 offices in Irwindale. In 2003, CleanTech signed a consent order with the DTSC and was
16 fined \$10,000 for storing used motor oil longer than authorized on 121 occasions. As a
17 condition of the settlement, the company agreed to send its head, Robert Brown III, to
18 California Compliance School for hazardous waste training.

19 In 2005, the company signed another consent order with the DTSC-once again
20 for storing waste for longer than authorized, but also for failing to use separate
21 manifests for different drivers of hazardous waste trucks, for failing to include a
22 statement on receipts signed by the generator that the generator had a program to
23 reduce the volume or quality and toxicity of the hazardous waste to an economically
24 practicable degree, and other infractions. The fine was \$4,500. Clearly, California
25 Compliance School didn't work. But the DTSC is trusting this company to safely branch
26 out into a new corner of the hazardous waste business and expand its hauling
27 operations to do it.

1 **Response to Appeal Comment 3-4:** Because Petitioner Liza Tucker did not submit
2 comments on the draft permit decision or participate in the public meetings, Petitioner
3 Liza Tucker only has standing to petition for review of any issues that pertain to
4 changes from the draft permit decision, issued on May 18, 2012, to the final permit
5 decision. This Appeal Comment does not pertain to changes from the draft permit
6 decision, issued on May 18, 2012, to the final permit decision.

7 This Appeal Comment does not request review of a condition of the permit. Also,
8 the issue of CleanTech's environmental enforcement history was not raised during the
9 public comment period. The Department finds that Petitioner has failed to meet the
10 burden to establish that the Department should grant a review of this issue pursuant to
11 the criteria set forth in California Code of Regulations, title 22, section 66271.18(a). For
12 these reasons, the Department denies the petition for review of the issues raised in
13 this Appeal Comment.

14 **Appeal Comment 3-5:** This letter is our official petition to appeal the permit issued to
15 CleanTech Environmental through the process provided in 22 CCR § 66271.18. This
16 regulation allows any person to petition the DTSC to review a permit, provided that the
17 petition is filed within 30 days of the permit issuance. This petition is timely, and it is our
18 hope that exposing the shoddy practices in this permit proceeding will lead to improved,
19 and legally sufficient, practices by the DTSC in the future, aimed at protecting the
20 public.

21 The regulation on petitions requires a "statement of reasons supporting the
22 review." Those reasons outlined above more than support review of this permit and
23 demonstrate why more is required of the DTSC if it is going to issue this permit. The
24 department's review of this project simply was not adequate or legal when the failings
25 outlined in this letter are considered.

26 We anticipate that the DTSC will attempt to ignore our appeal, much like it has
27 ignored the likely environmental impacts of this project. We did not participate during the
28 initial deadline for commenting on this project since we and others were not notified of

1 this project. But we do not believe that our prior participation is a requirement in the
2 regulation on appeals, 22 CCR § 66271.18. Specific to our situation, the regulation
3 states, "Any person who failed to file comments or failed to participate in the public
4 hearing on the draft permit may petition for administrative review only to the extent of
5 the changes from the draft to the final permit decision."

6 Importantly here, there were changes between the draft permit and the final
7 permit--substantial changes. For instance, the artificial limit on the capacity of the
8 facility that the DTSC relies on to entirely ignore the EIR requirement was added into
9 the final permit as "Special Condition 22." This Special Condition is central to the
10 issues with the permit, because, as discussed above, just because a permit condition
11 purports to limit the facility it doesn't change the facility's actual size. This facility is so
12 large that an EIR must be prepared under the law and CEQA. The DTSC must go back
13 and look at the possibility that the facility will use its full capacity, and how the use of
14 this full capacity might increase cumulative impacts on the community.

15 **Response to Appeal Comment 3-5:** Because Petitioner Liza Tucker did not submit
16 comments on the draft permit decision or participate in the public meetings, Petitioner
17 Liza Tucker only has standing to petition for review of any issues that pertain to
18 changes from the draft permit decision, issued on May 18, 2012, to the final permit
19 decision. This Appeal Comment does not pertain to changes from the draft permit
20 decision, issued on May 18, 2012, to the final permit decision.

21 By way of explanation, this Appeal Comment concerns the issue of the "standing"
22 of Petitioner Liza Tucker to submit a petition for review. Pursuant to California Code of
23 Regulations, title 22, section 66271.18, "Any person who failed to file comments or
24 failed to participate in the public hearing on the draft permit may petition for
25 administrative review only to the extent of the changes from the draft to the final permit
26 decision." DTSC issued a draft permit for public review pursuant to California Code of
27 Regulations, title 22, section 66271.9, on May 18, 2012. Pursuant to California Code of
28 Regulations, title 22, section 66271.12, Petitioner Liza Tucker had an obligation to raise

1 issues and provide information during the public comment period. The specific permit
2 condition identified by Petitioner Liza Tucker, “Special Condition 22,” [permit condition
3 V.22], was included in the draft permit and was not a “change from the draft to the final
4 permit decision.”

5 Further, to the extent this Appeal Comment pertains to the CEQA process for this
6 project; CEQA provides a separate judicial appeal process to resolve disputes
7 concerning compliance with CEQA.

8 The Department finds that Petitioner has failed to meet the burden to establish
9 that the Department should grant a review of this issue pursuant to the criteria set forth
10 in California Code of Regulations, title 22, section 66271.18(a). For these reasons, the
11 Department denies the petition for review of the issues raised in this Appeal Comment.

12 **VI. ORDER**

13
14 For the reasons set forth above, the Department grants review of Appeal
15 Comments 1-4 and 2-8. Review of Appeal Comments 1-1, 1-2, 1-3, 1-5, 1-6, 1-7, 1-8,
16 1-9, 2-1, 2-2, 2-3, 2-4, 2-5, 2-6, 2-7, 2-9, 2-10, 3-1, 3-2, 3-3, 3-4, and 3-5 is denied.

17 Pursuant to California Code of Regulations, title 22, section 66271.18,
18 subdivision (c), the Department will issue a public notice to set a briefing schedule for
19 Appeal Comments 1-4 and 2-8, for which review has been granted. Interested parties
20 will be given an opportunity to file written arguments pertaining to these two (2) appeal
21 comments in accordance with the briefing schedule.

22 The written arguments should include all reasonably available arguments and
23 factual grounds supporting their position, including all supporting material. To assure
24 complete consideration, all supporting materials should be included in full and may not
25 be incorporated by reference, unless they are already part of the administrative record,
26 or consist of State or Federal statutes and regulations, Department of Toxic Substances
27 Control or USEPA documents of general applicability, or other generally available
28 reference materials. Additionally, the briefing documents must provide facts showing

1 the technical, regulatory or statutory basis for the requested outcome, and must be
2 accompanied by the data and other reference material that is used to support the
3 argument, including citations to the administrative record.

4 All arguments pertaining to the Appeal Comments that have been granted review
5 must be signed, and filed in writing, received by the date specified in the public notice,
6 and addressed as follows:

7
8 Pauline Batarseh
9 Permit Appeals Officer
10 Department of Toxic Substances Control
11 8800 Cal Center Drive
12 Sacramento, California 95826-3200

13 An additional electronic copy of the briefing arguments may be emailed to
14 appeals@dtsc.ca.gov.

15 Persons who submit written arguments may also request that DTSC hold an
16 Informal Appeals Conference, so they may also present their arguments orally. If
17 requested, DTSC has the discretion to schedule the Informal Appeals Conference after
18 the close of the briefing period.

19 Pursuant to California Code of Regulations, title 22, section 66271.15(a)(1), the
20 permit decision continues to be stayed pending the Department's decision after briefing
21 of the appeal comments for which review was granted.

22 Dated: May 29, 2013

23
24 // original signed by //

25 _____
26 Pauline Batarseh
27 Permit Appeals Officer
28 Department of Toxic Substances Control