



**Jared Blumenfeld**  
Secretary for  
Environmental Protection



## Department of Toxic Substances Control



**Gavin Newsom**  
Governor

Meredith Williams, Ph.D.  
Acting Director  
1001 "I" Street  
P.O. Box 806  
Sacramento, California 95812-0806

September 27, 2019

Certified Mail No.: 7018-0680-0000-9827-9850

Mr. Fred Rex  
WIT Sales and Refining  
538 Phelan Ave.  
San Jose, California 95112

### NOTICE OF PROVISIONAL INSPECTION VIOLATION SCORES, 2019 FACILITY VIOLATION SCORING PROCEDURE SCORE, AND 2019 COMPLIANCE TIER ASSIGNMENT

Dear Mr. Fred Rex:

**2019 Facility Violations Scoring Procedure (VSP) Score: 30.00**  
**2019 Compliance Tier Assignment: Conditionally Acceptable**

The purpose of this letter is to provide Wit Sale and Refining, CAD980888598, located at 538 Phelan Ave., San Jose, CA 95112 (hereinafter, the "Facility") with a provisional inspection violation score for each compliance inspection that was conducted during the preceding ten (10) year period beginning January 1, 2009, through December 31, 2018, the Facility's 2019 VSP Score, and compliance tier assignment pursuant to California Code of Regulations (CCR), title 22, section 66271.53, subdivision (b)(2) and section 66271.54, subdivisions (c).<sup>1</sup>

The provisional inspection violation scores for the Facility are provided in the enclosed Inspection Violation Scoring Matrix. A provisional inspection violation score is the sum of the initial score for each Class I violation that occurred during a compliance inspection, and any adjustment to the initial Class I violation score based on repeat violations.<sup>2</sup> (See 22 CCR § 66271.53, subd. (a).) The basis for the score for each Class I violation is also provided in the enclosed Inspection Violation Scoring Matrix.

<sup>1</sup> Pursuant to Senate Bill (SB) 673 (Stats. 2015, chapter 611), the Department of Toxic Substances Control (DTSC) adopted new hazardous waste permitting criteria regulations, which became effective on January 1, 2019. The full text of the hazardous waste permitting criteria regulations is available at [https://www.dtsc.ca.gov/LawsRegsPolicies/Regs/upload/18-DTSC-SB-673-Reg-TEXT\\_OAL\\_20181023-revised.pdf](https://www.dtsc.ca.gov/LawsRegsPolicies/Regs/upload/18-DTSC-SB-673-Reg-TEXT_OAL_20181023-revised.pdf). More information regarding SB 673 is available at [https://www.dtsc.ca.gov/HazardousWaste/Permit\\_Roundtables.cfm](https://www.dtsc.ca.gov/HazardousWaste/Permit_Roundtables.cfm).

<sup>2</sup> For purposes of calculating a facility's inspection violation score, DTSC may also consider Class II violations that meet the definition of a Class I violation as specified in CCR, title 22, section 66260.10. (See 22 CCR § 66271.50, subd. (d)(1).)

Based on the provisional inspection violation scores for the Facility for the ten (10) year period beginning January 1, 2009, through December 31, 2018, DTSC has calculated a Facility VSP Score for the Facility of "**30.00**". A Facility VSP Score is the sum of all provisional or final inspection violation scores for each compliance inspection conducted during the preceding ten (10) years, divided by the number of compliance inspections. (See 22 CCR § 66271.54, subd. (a).)

A facility may be assigned to one of three compliance tiers based on its Facility VSP Score:

- "Acceptable." A facility that receives a Facility VSP Score of less than 20 shall be designated as having a Facility VSP Score that is "acceptable". (See 22 CCR § 66271.54, subd. (b)(1).)
- "Conditionally Acceptable." A facility that receives a Facility VSP Score equal to or greater than 20 and less than 40 shall be designated as having a Facility VSP Score that is "conditionally acceptable." Facilities that receive a final compliance tier assignment of "conditionally acceptable" are required to comply with additional requirements outlined in the regulations. (See 22 CCR § 66271.54, subd. (b)(2); 22 CCR § 66271.56.)
- "Unacceptable." A facility that receives a Facility VSP Score equal to or greater than 40 shall be designated as having a Facility VSP Score that is "unacceptable." DTSC is required to initiate permit denial, suspension, or revocation proceedings for facilities that receive a final compliance tier assignment of "unacceptable." (See 22 CCR § 66271.54, subd. (b)(3); 22 CCR § 66271.57.)

As a result of the Facility's VSP Score, DTSC has assigned the Facility to a compliance tier of "**Conditionally Acceptable**". Generally, as discussed further below, a facility's compliance tier assignment becomes final after all provisional inspection violation scores upon which the Facility VSP Score is based become final pursuant to CCR, title 22, section 66271.53, subdivision (d).

### **Provisional Inspection Violation Score Disputes and Compliance Tier Assignment Challenges**

An owner or operator of a facility may dispute a provisional inspection score pursuant to CCR, title 22, section 66271.53, subdivision (c) by filing a Provisional Inspection Violation Score Dispute Document (template available at <https://dtsc.ca.gov/violations-scoring-procedure/>) within sixty (60) calendar days of this notice. All of the following information must be enclosed with the Dispute Document cover letter:

- A statement that describes in detail the factual and legal basis of the dispute and the relief sought;
- Any claimed erroneous facts, assumptions, approaches, or conclusions of law made by DTSC;

- A statement describing in detail any efforts already made by the owner or operator to resolve the dispute with DTSC; and
- Any photographs, documents, or any other material that supports the owner's or operator's position regarding the disputed provisional inspection violation score.

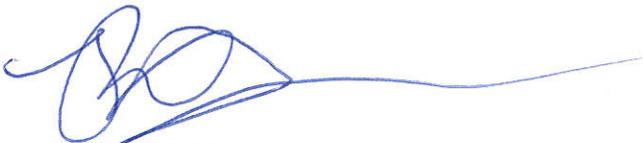
The owner or operator of a facility may request a one-time extension of up to sixty (60) calendar days to submit a Provisional Inspection Violation Score Dispute Extension Document (template available at <https://dtsc.ca.gov/violations-scoring-procedure/>).

DTSC will issue a written decision, granting or denying, in whole or in part, the relief sought by the owner or operator of a facility disputing a provisional inspection violation score. A provisional inspection violation score will become the final inspection violation score consistent with DTSC's written decision. A provisional inspection violation score will also become the final inspection violation score if the owner or operator of a facility does not file a Dispute Document within sixty (60) calendar days of this notice.

A facility's compliance tier assignment becomes final after all inspection violation scores upon which the Facility VSP Score is based become final pursuant to CCR, title 22, section 66271.53, subdivision (d). Final compliance tier assignments of "acceptable" or "conditionally acceptable" are not subject to additional administrative dispute resolution. (See 22 CCR § 66271.54, subds. (e), (f).) However, owners or operators of facilities assigned to a final compliance tier of "unacceptable" may further administratively challenge their final compliance tier assignment under California Code of Regulations, title 22, section 66271.57.

Issuance of this provisional inspection violation score, Facility 2019 VSP Score, and compliance tier assignment do not constitute an enforcement action. If you have any questions regarding this notice, please contact [VSP\\_Info@dtsc.ca.gov](mailto:VSP_Info@dtsc.ca.gov). If you have any questions regarding the dispute process, please contact [VSP\\_Dispute\\_Inbox@dtsc.ca.gov](mailto:VSP_Dispute_Inbox@dtsc.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read 'Keith Kihara', followed by a long horizontal line extending to the right.

Keith Kihara, Chief  
Enforcement and Emergency Response Division

Enclosure(s)

Violation Scoring Matrix  
Proof of Service

### Violation Scoring Matrix

Facility Name:		WIT SALES AND REFINING			10 Year Date Range:		2009-2018		Permit Effective Date:		3/24/2016		Link to EnviroStor	
Address:		538 PHELAN AVENUE, SAN JOSE, CA 95112			Number of Inspections:		3		Permit Expiration Date:		3/23/2026		(Inspection Reports, SOVs,	
EPA ID:		CAD980888598			Total Number of Violations Scored:		4		Date VSP Completed:		8/5/2019		etc.)	
Inspection Date:	6/30/2010 CEI & 8/13/2010 FRR	Class I Justification	Citation	Violation	Potential for Harm	Potential for Harm Justification	Extent of Deviation	Extent of Deviation Justification	Initial Score	Repeat (Yes/No)	Date(s) of Previous Violation	Adjustment Factor (%)	Adjusted Score	
Inspection Type:	CEI & FRR													
Class I Violations:	0	n/a	n/a	No Class I Violations	n/a	n/a	n/a	n/a	0	n/a	n/a	n/a	0.00	
<b>Provisional Inspection Violation Score:</b>													0.00	
Inspection Date:	10/31/2013 CEI & 5/23/2014 FRR	Class I Justification	Citation	Violation	Potential for Harm	Potential for Harm Justification	Extent of Deviation	Extent of Deviation Justification	Initial Score	Repeat (Yes/No)	Date(s) of Previous Violation	Adjustment Factor (%)	Adjusted Score	
Inspection Type:	CEI & FRR													
Class I Violations:	0	n/a	n/a	No Class I Violations	n/a	n/a	n/a	n/a	0	n/a	n/a	n/a	0.00	
<b>Provisional Inspection Violation Score:</b>													0.00	
Inspection Date:	5/19/2015	Class I Justification	Citation	Violation	Potential for Harm	Potential for Harm Justification	Extent of Deviation	Extent of Deviation Justification	Initial Score	Repeat (Yes/No)	Date(s) of Previous Violation	Adjustment Factor (%)	Adjusted Score	
Inspection Type:	CEI													
Class I Violations:	1	The deviation from the requirements was significant enough that it could have resulted in a failure to prevent releases of HW or constituents to the environment during the active period of facility operation.	HSC 25123.5(b)(2)(D) and HSC 25189(e)	The facility conducted unauthorized treatment of HW. The facility secured a heat lamp immediately above a 5-gallon bucket (container) in the Precious Metal Stripping Unit area. The bucket contained tank bottom sludge removed from the stripping unit rinse tanks and heat was used to evaporate the HW.	Major	According to the HWFP, the facility had three precious metals stripping units, which contained the following waste types: spent cyanide solution, spent gold iodine etch solution, spent platinum solution, spent palladium solution, spent gold cyanide solution and other precious metal precipitates. The drop out from this process was placed into a 5-gallon polyethylene bucket. The facility used a heat lamp to treat the precipitates from this process. Cyanide is extremely toxic to humans. Acute (short-term) inhalation exposure to 100 milligrams per cubic meter (mg/m3) or more of hydrogen cyanide will cause death in humans. (1,2) meter (mg/m3) or more of hydrogen cyanide will cause death in humans. Chronic exposure to cyanide in humans via inhalation results in effects on the CNS, such as headaches, dizziness, numbness, tremor, and loss of visual acuity. A major potential for harm was assigned due to the wastestreams at issue in this violation.	Major	The facility was permitted to scoop the "drop out" waste into a 5 gallon polyethylene bucket, but not to treat the waste with a heat lamp. The act deviated from the requirement to such an extent that the HW management requirement was completely ignored and none of its provisions were complied with.	25	No	n/a	0	25.00	

### Violation Scoring Matrix

Facility Name:		WIT SALES AND REFINING		10 Year Date Range:		2009-2018		Permit Effective Date:		3/24/2016		Link to EnviroStor	
Address:		538 PHELAN AVENUE, SAN JOSE, CA 95112		Number of Inspections:		3		Permit Expiration Date:		3/23/2026		(Inspection Reports, SOVs,	
EPA ID:		CAD980888598		Total Number of Violations Scored:		4		Date VSP Completed:		8/5/2019		etc.)	
Class II Violation:	2	The deviation from the requirements was significant enough that it could have resulted in a failure to prevent releases of HW or constituents to the environment during the active period of facility operation and/or assure early detection of releases.	22 CCR 66264.195(d)	During the months of 3/2015-5/2015, on 33 separate operating days, the facility failed to document in its operating record of the facility, the required inspections of the facility's tank system and areas surrounding the externally accessible portion of the tank system.	Major	The facility had three precious metals stripping units, three precipitation units, one purification unit, one cyanide storage unit, one acid storage unit, one caustic storage unit and one solid waste storage unit. The facility was permitted to treat up to 1,500 gallons of HW each month. Cyanide is extremely toxic to humans. Acute (short-term) inhalation exposure to 100 milligrams per cubic meter (mg/m3) or more of hydrogen cyanide can cause death in humans. Chronic exposure to cyanide in humans via inhalation results in effects on the CNS, such as headaches, dizziness, numbness, tremor, and loss of visual acuity. A major potential for harm was assigned due to the wastestreams at issue in this violation.	Moderate	The facility did not perform or retain documentation of daily inspections of tank areas for two months, yet was in compliance during the remainder of the inspection period. The act deviated from the requirement, but the requirement functioned to some extent.	20	No	n/a	0	20.00
	3	The deviation from the requirements was significant enough that it could have resulted in a failure to prevent releases of HW or constituents to the environment during the active period of facility operation.	22 CCR 66264.192(i)(1)	The facility did not have a written tank system assessment, within the last five years, reviewed and certified by an independent, qualified, professional engineer, registered in California, attesting that the tank system had sufficient structural integrity and was acceptable for the transfer, storage, and treatment of HW.	Major	Proper tank certification is necessary to ensure that the tanks and associated tank systems do not collapse, rupture, or fail in any way. Wastestreams included HW cyanide solutions, scrap PC boards, and scrap metal. Cyanide is extremely toxic to humans. Acute (short-term) inhalation exposure to 100 milligrams per cubic meter (mg/m3) or more of hydrogen cyanide will cause death in humans. Chronic exposure to cyanide in humans via inhalation results in effects on the CNS, such as headaches, dizziness, numbness, tremor, and loss of visual acuity. A major potential for harm was assigned due to the wastestreams at issue in this violation.	Major	The facility completed a preliminary tank assessment on 1/3/2014. However, the professional engineer would not sign off on the tank assessment until the facility completed recommended changes. The facility failed to complete the recommendations provided by the certified professional engineer before the inspection on 5/19/2015. The requirement was rendered ineffective as its provisions were not complied with.	25	No	n/a	0	25.00
	4	The deviation from the requirements was significant enough that it could have resulted in a failure to prevent releases of HW or constituents to the environment during the active period of facility operation.	HSC 25201(a), 22 CCR 66270.30(a), and HWFP Part III (effective September 12, 1997)	The facility violated the permitted capacity of the Precious Metals Cyanide Storage Unit by storing six (6) 55-gallon drums. The facility was permitted for two (2) 55-gallon drums (or 110 gallons of waste) in this unit.	Major	Storage of cyanide waste in excess of the permitted storage capacity for that unit, there was an increased potential for a release to occur. Cyanide is extremely toxic to humans. Acute (short-term) inhalation exposure to 100 milligrams per cubic meter (mg/m3) or more of hydrogen cyanide will cause death in humans. Chronic exposure to cyanide in humans via inhalation results in effects on the CNS, such as headaches, dizziness, numbness, tremor, and loss of visual acuity. A major potential for harm was assigned due to the wastestreams at issue in this violation.	Moderate	The facility was permitted to store up to 110 gallons of waste in the Precious Metals Cyanide Storage Unit, but at the time of inspection there were six 55-gallon (total 330 gallons) drums. The facility stored 220 gallons in excess of the permitted amount for that unit. Only one of the three permitted storage units were cited in violation, demonstrating that the act deviated from the requirement, but the requirement functioned to some extent.	20	No	n/a	0	20.00
<b>Provisional Inspection Violation Score:</b>												90.00	

## Violation Scoring Matrix

Facility Name: WIT SALES AND REFINING	10 Year Date Range: 2009-2018	Permit Effective Date: 3/24/2016	<a href="#">Link to EnviroStor</a> (Inspection Reports, SOVs, etc.)
Address: 538 PHELAN AVENUE, SAN JOSE, CA 95112	Number of Inspections: 3	Permit Expiration Date: 3/23/2026	
EPA ID: CAD980888598	Total Number of Violations Scored: 4	Date VSP Completed: 8/5/2019	

FACILITY VIOLATIONS SCORING PROCEDURE SCORE				
Inspection Number	Number of Violations Scored	Inspection Type(s)	Inspection Date(s)	Provisional Inspection Violation Score
1	0	CEI & FRR	6/30/2010 CEI & 8/13/2010 FRR	0.00
2	0	CEI & FRR	10/31/2013 CEI & 5/23/2014 FRR	0.00
3	4	CEI	5/19/2015	90.00
Sum of Provisional Inspection Violation Scores				90.00
<b>*FACILITY VSP SCORE</b>				<b>30.00</b>

**\*FACILITY VSP SCORE = Sum of Provisional Inspection Violation Scores/Total Number of Inspections conducted in 10 year (calendar) timeframe**

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|---|--|
| <p>CCR = California Code of Regulations<br/>                 CDI = Case Development Inspection<br/>                 CEI = Compliance Evaluation Inspection<br/>                 CI = Complaint Investigation<br/>                 DOT = Department of Transportation<br/>                 DTSC = Department of Toxic Substances Control<br/>                 EPA ID = Environmental Protection Agency Identification<br/>                 FCI = Focused Compliance Inspection<br/>                 FRR = Financial Records Review<br/>                 FSD = Facility Self Disclosure</p> | <p>FUI = Follow-Up Inspection<br/>                 GAR = Groundwater Audit Report<br/>                 GME = Groundwater Monitoring Evaluation<br/>                 HSC = Health and Safety Code<br/>                 HW = Hazardous Waste<br/>                 HWFP = Hazardous Waste Facility Permit<br/>                 n/a = Not Applicable<br/>                 NFRR = Non-Financial Record Review<br/>                 RCRA = Resource Conservation and Recovery Act<br/>                 SOV = Summary of Violations<br/>                 VSP = Violations Scoring Procedure</p> |
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## PROOF OF SERVICE

1. I served the NOTICE OF PROVISIONAL INSPECTION VIOLATION SCORES, 2019 FACILITY VIOLATION SCORING PROCEDURE SCORE, AND 2019 COMPLIANCE TIER ASSIGNMENT on Fred Rx, WIT Sales and Refining, EPA ID Number CAD980888598.
2. I served Fred Rex, WIT Sales and Refining, by mailing a copy of the aforementioned document via Certified Mail, Receipt No. 7018-0680-0000-9827-9850, return receipt requested, in a sealed envelope addressed to:

Mr. Fred Rex  
WIT Sales and Refining  
538 Phelan Ave.  
San Jose, California 95112

3. My name, business address, and telephone number are:

Alan Korematsu  
Department of Toxic Substances Control  
HWMP, 11<sup>th</sup> Floor  
1001 I Street  
Sacramento, California 95812-0806  
(916) 323-3706

I declare under penalty of perjury that the foregoing is true and correct and that this declaration of Proof of Service is executed on October 4, 2019 at Sacramento, California.



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(Signature)