MEMORANDUM

FROM: Nelline Kowbel, PE, BCEE
Division Chief
Site Mitigation and Restoration Program

TO: BKK Class I Landfill – Administrative Record File

DATE: January 14, 2021

Re: Explanation of the Preliminary De Minimis Determination for the Early Cashout Settlement at the BKK Class I Landfill (West Covina, California)

This memorandum summarizes the basis for the preliminary determination made by the Department of Toxic Substances Control (“DTSC”) to offer a de minimis settlement to each party that sent 4,000 tons or less of hazardous substances to the BKK Class I Landfill (hereinafter referred to as the “Class I Landfill” or “Site”).

Liability for disposal of hazardous substances is determined by the California Hazardous Substance Account Act (“HSAA”) and the federal Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”). (Health & Safety Code, § 25300 et seq.; 42 U.S.C. § 9601 et seq.) Both statutes provide for the lead agency to enter de minimis settlements with parties that sent only a minimal amount of hazardous substances to a site, in terms of the amount and toxicity or other hazardous effects, relative to the amount and effects of other hazardous substances at the site. (Health & Safety Code, § 25360.6; 42 U.S.C. § 9622(g.).)

Potentially Responsible Parties

The Potentially Responsible Parties (“PRPs”) at the Class I Landfill include the owners and operators of the Site and “arrangers.”1 “Arrangers” are parties that arranged for the treatment, disposal or transportation of hazardous substances to the Class I Landfill,

1 DTSC has entered into a settlement with former owner/operators of the Class I Landfill and may in the future take enforcement action against and/or pursue a settlement agreement with the current owner/operator of the Class I Landfill.
including parties that selected the Class I Landfill for disposal. This memo specifically focuses on arrangers that sent a small amount of hazardous substances to the Class I Landfill relative to the total amount of waste at the Class I Landfill, and that are eligible for a *de minimis* settlement.

DTSC, in coordination with the BKK Working Group (“BWG”), determined which parties qualify to receive initial *de minimis* settlement offers. To make this determination, DTSC is relying on volumetric data in the Industrial Waste-In Database (“IWI Database”), a comprehensive database of waste shipments sent to the Class I Landfill. The IWI Database indicates that over 12,000 parties sent hazardous substances to the Class I Landfill and that a total of approximately 5.18 million tons of hazardous substances were disposed of at the Class I Landfill. Based on this information, DTSC has made a preliminary determination that any party that sent 4,000 tons or less of hazardous substances to the Class I Landfill may qualify to receive a *de minimis* settlement offer.

As a means of furthering the remedial and enforcement goals for the Class I Landfill, DTSC has grouped the arranger PRPs into three preliminary categories, as follows:

- **The BWG** – The BWG members are the performing parties and include approximately 50 former customers who entered into three judicially approved consent decrees, which require the BWG to conduct response actions at the Class I Landfill and to partially reimburse DTSC for its oversight costs. The BWG includes some of the parties named in an Imminent and Substantial Endangerment Determination and Order and Remedial Action Order issued by DTSC in December 2004, as well as additional PRPs that later joined the BWG.

- **Non-Performing Arrangers** – DTSC is preliminarily designating as Non-Performing Arrangers any party that contributed over 4,000 tons of waste to the Class I Landfill and is not a member of the BWG or has not otherwise settled with DTSC.

- **De Minimis Arrangers** – Any party that contributed 4,000 tons or less of hazardous substances to the Site is a De Minimis Arranger. DTSC may, in the future, designate additional arrangers as *de minimis*.

Table 1 provides additional detail about the preliminary *De Minimis* Arranger PRP category. Table 1 is for illustrative purposes only and is subject to revisions as any new information becomes available. All numbers are approximate and based on current estimates.

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2 The BWG created the IWI Database using three principal sources of information: (1) electronic billing records maintained by BKK Corporation, the current owner and operator of the Site; (2) hard copy manifests or other shipping documents maintained by BKK Corporation; and (3) an electronic database of shipments maintained by DTSC.
Table 1. *De Minimis* Arranger Volume Allocation

<table>
<thead>
<tr>
<th>Tonnage Category</th>
<th># of PRPs</th>
<th>Total Tons</th>
<th>% of Total Waste</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,000.01 to 4,000 tons</td>
<td>221</td>
<td>410,318</td>
<td>7.92%</td>
</tr>
<tr>
<td>500.01 to 1,000 tons</td>
<td>209</td>
<td>147,476</td>
<td>2.85%</td>
</tr>
<tr>
<td>300.01 to 500 tons</td>
<td>247</td>
<td>95,511</td>
<td>1.84%</td>
</tr>
<tr>
<td>200.01 to 300 tons</td>
<td>215</td>
<td>53,141</td>
<td>1.03%</td>
</tr>
<tr>
<td>100.01 to 200 tons</td>
<td>488</td>
<td>69,987</td>
<td>1.35%</td>
</tr>
<tr>
<td>10.01 to 100 tons</td>
<td>3,757</td>
<td>115,778</td>
<td>2.23%</td>
</tr>
<tr>
<td>0 to 10 tons</td>
<td>5,943</td>
<td>17,389</td>
<td>0.34%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>11,080</strong></td>
<td><strong>909,600</strong></td>
<td><strong>17.56%</strong></td>
</tr>
</tbody>
</table>

Table 1 does not constitute a “non-binding preliminary allocation” of responsibility or liability by DTSC under the HSAA (Health & Safety Code, § 25300 *et seq.*) or CERCLA (42 U.S.C. § 9601 *et seq.*).

DTSC hereby makes a preliminary determination that each of the approximately 11,080 *De Minimis* Arrangers presumptively qualifies to receive a *de minimis* settlement offer.

Rationale for Preliminary *De Minimis* Arranger PRP Volumetric Cutoff

DTSC makes this preliminary determination for *De Minimis* Arranger PRPs as a matter of its enforcement discretion and in consideration of applicable United States Environmental Protection Agency (U.S. EPA) guidance on CERCLA *de minimis* determinations.³ DTSC finds this preliminary determination to be reasonable, fair to the parties, and in the public interest. The rationale for DTSC’s decision making includes the following:

- Each arranger PRP that qualifies to receive a *de minimis* settlement offer under this preliminary determination sent a minimal amount of hazardous substances to the Class I Landfill, both in terms of the amount and toxicity or other hazardous effects, relative to other hazardous substances at the Class I Landfill.

- The *De Minimis* Arranger PRP group represents over 90% of all arranger PRPs, but the group sent less than 20% of the total hazardous substances disposed of at the Class I Landfill. Accordingly, settlements with this *de minimis* group, based on each PRP’s individual volumetric share, will constitute a relatively small portion of the total response costs at the Class I Landfill.

³ See for example, U.S. EPA, “Streamlined Approach for Settlements with *De Minimis* Waste Contributors under CERCLA Section 122(g)(1)(A),” OSWER Dir. 9834.7-1D (July 30, 1993).
• The preliminary volumetric cutoff at 4,000 tons excludes viable arranger PRPs, such as the BWG members and Non-Performing Arrangers. DTSC may negotiate sufficient settlements with these remaining arranger PRPs or litigate against them to perform or finance the remaining response actions at the Class I Landfill.

• Defining the preliminary de minimis cutoff allows DTSC to conserve resources for subsequent negotiations with the remaining larger volume arranger PRPs. As stated above, the remaining arranger PRPs are responsible for approximately 80% of the total volume of hazardous substances disposed of at the Class I Landfill.

• By offering a cash-out settlement to a large number of de minimis arranger PRPs based on volume only, DTSC lowers the transaction costs of all parties by reducing both the number of prolonged negotiations and the potential for costly and time-consuming litigation. Additionally, settling with de minimis arranger PRPs resolves the liability of a large number of PRPs early, reducing the utilization of government resources.

Conclusion

U.S. EPA guidance states that the de minimis cut-off determination is site-specific. Given the large number of arranger PRPs at the Class I Landfill and the sufficient availability of remaining viable arranger PRPs, DTSC believes 4,000 tons is a fair preliminary de minimis cut-off and is in the public interest. This preliminary cut-off is also within the 0.07% to 10.0% volumetric cut-off range that U.S. EPA has used in other de minimis settlements.

It follows that de minimis settlements for the Class I Landfill are appropriate because the De Minimis Arranger PRPs sent a minimal amount of hazardous substances to the Class I Landfill and the toxic or other hazardous effects of the substances they contributed are minimal in comparison to the amount and effects of the hazardous substances contributed to the Class I Landfill by other arranger PRPs.