Consumer Watchdog

January 15, 2013

Ms. Debbie Raphael
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RE: CleanTech Permit

Dear Ms. Raphael,

The New Year has begun, but the residents of San Gabriel Valley around the City of Irwindale will have little to celebrate. Over the quiet holiday period, your department shockingly issued a permit authorizing Agritec International Ltd. to build and operate a new CleanTech Environmental hazardous waste facility in their midst without an Environmental Impact Report (EIR) as required by the California Environmental Quality Act (CEQA) and, more importantly, common sense.

This permit blatantly disregards the legal requirements of the California Environmental Quality Act (CEQA) and is a display of disrespect, once again, to working class, largely minority communities that have a right to expect your department to protect their community and the environment from toxic harm.

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

Toxins already surround residents of the San Gabriel Valley in and around Irwindale. At least a dozen EPA-regulated facilities that already generate, transport, treat, store or dispose of hazardous waste stand within 300 feet of this project location. But the DTSC has not studied the cumulative impacts of this project on Irwindale or nearby cities. Los Angeles County has already identified the Santa Fe Dam Recreational Area, a regional bright spot, as a significant ecological area. This facility will be located right next to this sanctuary for both protected species and people who like to swim, hike, and fish. Your initial Negative Declaration originally

did not even mention this fact. Moreover, the facility will be built within half a mile of daycare centers, and within a few miles of schools and homes for the elderly. People will have to live with this facility and the trucks that deliver toxic waste to the facility every day.

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

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

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

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

It's common knowledge that companies routinely game the system and roll over the DTSC. In this case, sources tell us that the permitting division pressured your department's CEQA compliance division to hurry up and clear the project without even the pretense of a thorough Initial Study, let alone a full-blown EIR. This practice has been going on for years.

The DTSC exists to perform a public service, which is to protect communities and the environment from toxic harm. To ignore the potential for toxic harm, indeed to set up conditions that could guarantee that toxic harm results from your actions, is unconscionable. We are at a crossroads now. Should we assume, despite your assurances to the California Senate during your confirmation, that business as usual will continue at the DTSC under your leadership where corporate wealth trumps community health? Or can Californians count on you to change the department's culture to fulfill your mission of protecting communities and the environment from toxic harm and require an EIR for this large-scale facility?

In this situation, your department is the lead agency on the project. CEQA indisputably requires the DTSC to perform an EIR. Yet, your department preferred to interpret that acronym as standing for: Entirely Ignore Report. We ask that you exercise executive leadership and reconsider the DTSC's granting of this permit. To prevent the same thing happening with the next facility, you should end the DTSC's practice of using shoddy Initial Studies and Negative Declarations to justify the building and expansion of hazardous waste facilities that pose a clear danger to communities.

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

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

We anticipate that the DTSC will attempt to ignore our appeal, much like it has ignored the likely environmental impacts of this project. We did not participate during the initial deadline for commenting on this project since we and others were not notified of this project. But we do not believe that our prior participation is a requirement in the regulation on appeals, 22 CCR § 66271.18. Specific to our situation, the regulation states, "Any person who failed to file comments or failed to

participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision."

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

Reviewing this appeal and permit would be a positive step towards rebuilding DTSC's trust with the public. We look forward to discussing this as well as the matter of permit standards when Jamie Court and I next meet with you.

All Best,

Liza Tucker

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