



July 24, 2012

Debbie Raphael, Director
California Department of Toxic Substances Control
FAX: (916) 324-3158

Dear Director Raphael,

New and contradictory reports concerning a recent hazardous materials release at the Evergreen Oil facility in Newark, California lead us to once again ask your department to shutter the Evergreen Oil re-refiner indefinitely pending a complete review of its operations and safety procedures. If such action requires convening multiple regulatory agencies with oversight of the plant, we urge you to do so now.

This is your opportunity to show strong leadership and creativity in a department that appears to have faltered for years.

The latest incident at Evergreen, a July 6 release of superheated and hazardous "heat transfer fluid," triggered an evacuation of the plant, a worker injury and a warning to surrounding homes and schools of "strong chemical odors." As you know, this is only the latest in a string of accidents at Evergreen stretching over a period of many years.

In addition to the obvious concerns for community safety in the wake of this recent incident, we are concerned that the Department of Toxic Substances Control has not met the standard of protection that California communities have a right to expect. We ask that you take personal charge of this issue and make it a regulatory model for your department.

The DTSC, previous to your leadership, let Evergreen off the hook for at least a dozen years with consent decrees and hand-slap fines for:

- Cracks and gaps in waste container and storage areas,;
- Failure to track contaminated petroleum waste coming in and out of the facility;
- Careless soil contamination; and
- Omissions in and disregard of its own safety inspection system.

As you will recall from our testimony to the State Senate, serious accidents at the plant include a major fire and release of acid in March 2011, and the release of fumes that have sickened elementary school, junior high school and high school students over the years.

Caught in this toxic mix is your department. The question is whether DTSC's actions and lack of actions are enabling Evergreen to continue making mistakes that

endanger the surrounding community. The July 6 leak is not an isolated incident. It's just one more drop in a very heavy bucket.

In recent telephone conversations with Consumer Watchdog, DTSC enforcement officials have acknowledged deep fragmentation of enforcement authority among several agencies and departments. They also said that they were trying to clarify their enforcement powers, if any, over Evergreen's re-refining operations.

They stated that your department had no legal authority over a leak in the re-refinery portion of the plant, where the incident allegedly took place, because the used oil it processes is at least partly cleaned of toxic substances and so not covered by the DTSC permit issued to Evergreen Oil.

They did not know what, if any, action was being taken by any other regulatory body.

If you personally consider the DTSC unable to regulate the whole of the Evergreen plant, we request that you convene an immediate meeting of regulatory agencies to determine who *can* take action.

On July 17, your own officials told us that Evergreen Oil had not informed either the DTSC or the Bay Area Air Quality Management District immediately after the high-temperature leak at its re-refinery complex. They said at the time that that they were not told of the incident for at least several days afterward.

These statements are fully or partly contradicted by people at the scene, our own reporting, and Evergreen's own Hazardous Materials Spill Report to the California Emergency Management Agency:

*The hazardous leak began at 8:32 a.m. on July 6

*Fire fighters arrived on the scene at 8:43 a.m.

*70 employees were evacuated and returned to the plant at some point after the leak was contained around 10:30 a.m. One worker was treated at a medical facility and went back to work. We do not know the precise time of the evacuation.

*Evergreen filed its Hazard Materials Spill Report at 8:44 a.m.

*The report showed the leak was not of recycled oil but synthetic heat transfer fluid manufactured by Dow Chemical Co., which is defined as hazardous by the Alameda County Health and Environmental Agency. At the very least, this should have triggered the DTSC's attention.

*The California Emergency Management Agency sent the report to the DTSC's emergency hotline email system on the morning of July 6 as well as to other local

and state regulators. Either the DTSC hotline was unattended or the DTSC duty officer determined the incident report was not worthy of attention.

Finally, as you know, Evergreen, following the major fire and leak in March 2011, set up a community hotline for the plant's neighbors to call regarding smells, leaks, fires or other events at the plant. One community member who called the hotline on July 6 as a strong chemical odor spread described being "blown off" by the manager who answered the phone. She was told that a "leaky flange" had touched off the incident but "everything is under control." She was not told what substance was leaking or whether it posed any danger.

Such holes in oversight must be filled for the safety of all Californians. Rather than parsing its ability to regulate this portion and not that portion of a toxic waste plant, the DTSC should put itself at the forefront of saying that this is one dangerous accident too many.

In fact, the permit DTSC issued to Evergreen, in 2004, clearly allows the DTSC to improve and expand its oversight in order to ensure public safety and not be hampered by errors of the past.

The permit says specifically, "DTSC's issuance of this Permit does not prevent DTSC from adopting or amending regulations that impose additional or more stringent requirements than those in existence at the time the permit is issued and does not prevent the enforcement of these requirements against the Permittee."

On its face, the idea that the DTSC would have authority to regulate one part of a hazardous waste plant but not another is absurd, particularly when the release on July 6 was hazardous enough to warrant an evacuation, whether at the re-refinery or not.

EPA, Cal-EPA, DTSC, AQMD, CAL OSHA and state water agencies all have some authority over the events at a plant like Evergreen's Newark facility. If the plant's re-refinery portion is exempted from DTSC oversight and inspection, is anyone really in charge?

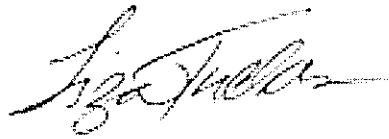
The DTSC is responsible for assisting and overseeing local agencies that also enforce the Hazardous Waste Control Act. It is this very system that is supposed to consolidate and coordinate permitting, inspections, and enforcement activities. Yet coordination appears to be largely absent.

Once again, this is an excellent opportunity for you to steer the department in a new direction, and a test run for how things will work in the future when it comes to serial toxic polluters. If regulators don't come down with force on companies like Evergreen Oil, there will be more accidents and more companies with a license to violate.

If there are legislative barriers to more robust enforcement, we renew our offer to work with you and the state Legislature to remove them.

We look forward to hearing from you about how the DTSC will address the problems at Evergreen and, also, the gaps in the department's procedures and the state's fragmented oversight.

Sincerely,

A handwritten signature in black ink, appearing to read "Liza Tucker". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Liza Tucker
Consumer Advocate
Consumer Watchdog
Santa Monica, CA