



April 3, 2013

Ms. Debbie Raphael  
Director, Department of Toxic Substances Control  
1001 I Street  
P.O. Box 806  
Sacramento, California 95812-0806  
FAX: 916-324-3158

RE: Golden Wasteland

Dear Ms. Raphael,

I write on behalf of Consumer Watchdog, a non-profit, non-partisan public interest group. Now that the Fair Political Practices Commission is formally investigating Chief Deputy Director Odette Madriago's financial conflicts concerning her investments in Chevron and other companies regulated or licensed by the DTSC, I write again to ask you to do the right thing and dismiss both Ms. Madriago and Deputy Director Stewart Black. Both these officials should have been placed on administrative leave as soon NBC News first reported they had financial conflicts early last month.

In your internal responses to our report, *Golden Wasteland*, about the DTSC's failure to enforce, financial mismanagement, cronyism, and indifference to communities under toxic siege, you say the report raises "valid issues" and is "worthy of careful review." Your formal, posted response admits that the department has lost public confidence, but you do little to restore it. You never address a single community out of the eight we highlighted as under toxic siege and unprotected by your department, and propose not a single concrete action to restore that confidence.

Instead of actions you can take right now to change DTSC culture, you advocate delay in the form of more studies, "independent" reviews, and fruitless structural re-organizations. On behalf of communities, we are asking for real steps to reform the DTSC.

Among them are firing tainted officials; using your powers to regulate and heavily fine refineries like Chevron that view toxic fires like the one at its refinery in Richmond last summer as just a cost of doing business; revoking the permits of serial environmental violators like hazardous waste recyclers Phibro-Tech in Santa Fe Springs and Evergreen Oil in Newark; denying new

permits to those same serial violators and to companies that have failed to perform mandated corrective actions; and hiring investigators to put boots on the ground in poisoned communities like Wildomar where environmental crimes were likely committed.

It is shameful that the DTSC has allowed enforcement to crumple. According to the governor's budget, DTSC currently employs 162 people in its administrative division and 42 people in External Affairs, which includes public relations. But the budget lists only 32 people staffing its Office of Criminal Investigations. The total number of investigators on staff has shrunk from 22 in 2008 to 13 today and none for all of Southern California where many major environmental crimes are committed. Your priorities are upside down. We call for you to reconfigure your staffing so that 10 to 15 percent of the roughly 1,000 people you employ are investigators by the end of fiscal 2014.

A legislative effort is already underway to reform the DTSC, and we encourage you to constructively engage in this effort by rethinking the department's culture, financial management and structure, instead of deflecting real change through cosmetic re-organizations and asking for additional resources from taxpayers that won't fix these problems. We're glad that you responded to our report, but you need to deal with the issues. Here they are in more detail:

### **Conflict of Interest**

In your formal response, "Restoring Public Confidence in DTSC," we are astonished to find that you defend the practice of investing in companies in which officials hold a direct interest. Though you say you want to clean house, the people running your department are tainted by the specter of impropriety. When the chief deputy of your agency invests up to \$100,000 in Chevron and does not want to regulate the refinery industry, you have to willfully turn a blind eye not to see something is terribly wrong. This is why people do not trust government.

Government Code Section 87100 states that no public official "shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

It defies logic to imagine that Chief Deputy Director Odette Madriago and Deputy Director Stewart Black could do their jobs without being responsible for decisions affecting Chevron, GE and other regulated companies in which they reported holdings. Any decisions *not* to regulate a sector—as DTSC did more than a decade ago after taking the first steps toward overseeing refineries—can also materially impact a company. The same with the DTSC’s stubborn refusal to sanction Chevron for its disastrous Richmond refinery fire last August, though it has full statutory authority to do so.

A serious review of decades’ worth of regulatory decisions on the part of Ms. Madriago and Mr. Black could not have credibly been completed within 24 hours of NBC’s news story, as the DTSC reported. A thorough review should have identified every decision they made concerning companies in which they invest and provided letters of recusal. Absent this, we again call for their dismissal.

### **Permitting**

In your formal response, you acknowledge serious problems in permitting and enforcement at the DTSC, attributing that to a “lack of standards, guidance, and accountability,” and a “culture of kicking hard decisions down the road.” Yet you do not address the revocation or denial of permits as a concrete and immediate way for DTSC to protect communities harmed by poorly regulated serial violators of hazardous waste laws.

The standard for permit revocations or denials is simple. The law clearly states that the DTSC has the right to deny, suspend or revoke any permit, registration or certificate in a situation where a generator’s violation or noncompliance shows a repeating or recurring pattern or may pose a threat to public health or safety or to the environment. No assessment about a sufficient “level of harm,” as you write in a December 2012 letter to us about Evergreen Oil, is necessary.

The fact that both hazardous waste recyclers Evergreen Oil in Newark and Phibro-Tech in Santa Fe Springs are serial violators of environmental laws more than justifies permit revocations or denials. The same for Chemical Waste Management that operates the Kettleman Hills hazardous waste dump. The fact that Chevron poisoned Richmond with a toxic fire last summer because of sloppy maintenance deserves tough DTSC sanctions at a minimum. What is the DTSC doing now to protect these communities? Waiting for the next accident? We call once again on the DTSC to severely

sanction dangerous polluters and revoke permits where amply warranted.

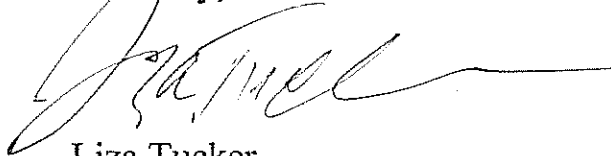
### **Enforcement**

In your formal response, you admit that the DTSC has serious fiscal problems. It does not help that the DTSC still does not collect all that it is owed from polluters. At the DTSC, some managers commonly decline to impose maximum fines, to sanction for each day of non-compliance with DTSC orders, and to bill realistic amounts to companies for cleaning up after they close shop. Behind closed doors, certain violations disappear and fines are lowered.

Some managers are willing to save hazardous waste processors money in the form of reduced fines or under-the-table exceptions to the rules, allowing metal shredders to dispose of hazardous waste in cheaper, un-protected municipal landfills, for example. But DTSC declines to spend the money on investigating new cases that desperately need it. Wildomar—where a community housing development was built on toxic soil, two people have died and others are sick—is a case in point. We call on the DTSC to conduct its own multi-media investigation of soil, water and air in Wildomar in order to make this community whole again.

A state's environmental laws are only as good as its enforcement. Will you, as director, cleanse the department of managers who hold their own interests and those of corporations above those of the public? Will you move forward with exercising the power already vested in the department to protect communities and the environment from toxic harm? Or will you continue on the current path that sends the public you work for, the regulated community, and your own staff exactly the wrong message?

Sincerely,



Liza Tucker  
Consumer Advocate  
Consumer Watchdog

CC: Governor Jerry Brown  
FAX: (916) 558-3160