

PCB Approval Decision and Response to Public Comments

**Veolia Environmental Services Technical Solutions, L.L.C.
Phoenix, Arizona
U.S. EPA ID: AZ0000337360**



**Issued by
U.S. Environmental Protection Agency, Region 9
San Francisco, California**

September 30, 2015

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1. Executive Summary

The U.S. Environmental Protection Agency, Region 9 (EPA or Agency) is renewing and modifying a Toxic Substances Control Act (TSCA) approval issued to Veolia Environmental Services Technical Solutions, L.L.C. (Veolia), as the facility operator, to continue to operate a commercial polychlorinated biphenyl (PCB) storage facility (Approval).

The Approval is being issued pursuant to Section 6(e)(1) of TSCA of 1976, 15 U.S.C. § 2605 (e)(1), and 40 C.F.R. Part 761, including any amendments or revisions thereto. Under TSCA, the action being proposed is known as an “Approval”. A TSCA Approval is essentially a permit; EPA follows a similar administrative process for Approval issuance, renewal and modification as a permit. The Approval will allow continued storage of PCBs in designated storage areas at the Facility.

The Veolia facility is located at 5736 West Jefferson Street in Phoenix, Arizona (Facility). This PCB Approval Decision and Response to Public Comments document explains and provides EPA’s rationale for issuing the Approval. This document also responds to public comments EPA received on the *Proposed Approval for Commercial Storage of Polychlorinated Biphenyls, Veolia Environmental Services Technical Solutions, L.L.C., Phoenix, Arizona*, dated June 11, 2015 (Proposed Approval), and the *Statement of Basis, Proposed Approval for Commercial Storage of Polychlorinated Biphenyls, Veolia Environmental Services Technical Solutions, L.L.C., Phoenix, Arizona*, dated June 11, 2015 (Statement of Basis). The Statement of Basis supported EPA’s Proposed Approval for Veolia to manage PCB wastes at the Facility, and is included in the Administrative Record (AR).

EPA’s Proposed Approval was subject to a 45-day public comment period that began on June 15, 2015 and ended on July 29, 2015. On July 15, 2015, EPA conducted an informational public meeting and hearing for the Proposed Approval. By the end of the public comment period, EPA had received a total of six public comments from two commenters on the Proposed Approval. The public comments and EPA’s response are discussed in Section 4 below.

The Approval is based on the written renewal application titled *TSCA Section 6(e) PCB Commercial Storage Renewal Application, Revision 10*, dated June 2015 (Renewal Application).

Veolia is currently operating under an approval to manage PCB wastes issued by EPA in 1994. The Facility submitted an application to renew the 1994 approval prior to its expiration on December 31, 1999. The submittal of the renewal application in 1999 administratively extended the terms of the 1994 approval. Veolia’s Renewal Application, dated June 2015, seeking a renewal superseded all earlier applications and serves as the basis for this Approval.

EPA has concluded, based upon its review of the Renewal Application, supporting documents, and the public comments, that the Approval satisfies the requirements of TSCA and 40 C.F.R.

Part 761 for storage of PCBs. EPA has also concluded that PCB operations at the Facility do not pose an unreasonable risk of injury to human health or the environment.

In addition to TSCA and the regulations at 40 C.F.R. § 761.65, EPA's issuance of the Approval is consistent with Section 106 of the National Historic Preservation Act (NHPA), Environmental Justice per Presidential Executive Order 12898, and Section 7 of the Endangered Species Act. EPA has evaluated the Renewal Application and its supporting documents along with the public comments and determined that the issuance of a TSCA Approval for the Facility is in compliance with these other requirements.

For additional details on EPA's rationale for issuing the Approval, see the Final Statement of Basis dated September 30, 2015. The Final Statement of Basis was revised from the June 2015 version based on one of the public comments received during the public comment period.

2. Introduction

The Facility is located in Phoenix on a 2.67 acre site approximately 6 miles west of downtown Phoenix and approximately 1 mile south of Interstate Highway 10 (I-10). The Facility is located within the Westgate Industrial Park and stores and processes hazardous waste and PCBs. Hazardous waste storage and processing is overseen by the Arizona Department of Environmental Quality (ADEQ). PCB storage and processing is overseen by EPA. The land is owned by Jewel Investments and operated by Veolia.

This document explains and justifies EPA's issuance of a TSCA Approval for the Facility to store and process PCBs. It contains a table showing the units being approved for PCB storage at the Facility, the public comments EPA received on the Proposed Approval and EPA's response to those comments.

3. Units Approved for PCB Storage

The Approval authorizes Veolia to store PCBs at the Facility as described in the table below:

Approved PCB Units and Maximum Capacities

Unit Name	Maximum Unit Storage Capacity	Maximum Permitted Storage Capacity for the Facility
Building 2 Storage Pod	41.59 cubic yards (8,400 gallons)	218 cubic yards (44,190 gallons)
Building 2 Curbed Storage Area	20.79 cubic yards (4,200 gallons)	
Building 3 Curbed Storage & Processing Area	228.76 cubic yards (46,200 gallons)	
Building 4 Storage Pod	16 cubic yards (3,232 gallons)	

*The Maximum Total Storage Capacity is less than the sum of the storage capacities of each unit.

The Approval authorizes Veolia to store PCBs at the Facility in the units and at the maximum capacities shown in the table. The volume of PCBs stored within each unit shall not exceed either the maximum unit design storage capacity or the maximum permitted storage capacity for the Facility, whichever is less. For additional information on the units being approved for PCB storage, see the Renewal Application.

4. Approval Decision and Public Comments

This section discusses the public comments EPA received on the Proposed Approval and EPA's response to the comments.

4.1. Public Participation

On June 15, 2015, EPA began a 45-day public comment period during which it solicited comments on its Proposed Approval and its determination that historic properties will not be affected by the issuance of the Approval to the Facility. On July 15, 2015, EPA conducted an informational public meeting and hearing for the Proposed Approval. The public comment period closed on July 29, 2015.

Seven people attended the public meeting and hearing held on July 15, 2015. EPA did not receive any verbal comments on the Proposed Approval during the public hearing portion of the meeting. A court reporter recorded the hearing and prepared a transcript of the presiding officer's statement.

EPA received one written comment from one organization on the Proposed Approval. The written comment was sent via email. The remaining five comments were received

verbally over the phone. No comments were received on EPA's determination that historic properties will not be affected by the approval decision. EPA made the determination based on the requirements of NHPA.

EPA is issuing a TSCA Approval for the Facility based on its review of the AR and public input. The AR contains the documents and information that EPA considered in making this final decision to issue the Approval. The AR is physically located at the EPA Region 9 Office, 75 Hawthorne Street, San Francisco, CA 94105.

The Agency considered the six public comments it received before making its final decision. Based on all the information available to date, EPA believes that PCB storage and processing operations, as allowed by this Approval, satisfy the requirements of TSCA and 40 C.F.R. Part 761 for storage of PCBs for disposal. In addition, EPA has also concluded that PCB operations at the Facility do not pose an unreasonable risk of injury to human health or the environment.

The most pertinent documents used in the decision making process can be found on EPA's website at www.epa.gov/region9/pcbs/veolia/.

Community members may also call the EPA project manager, Cynthia Ruelas, at (415) 972-3329 for additional assistance in obtaining copies of pertinent documents.

4.2. Public Comments on the Proposed Approval

The six public comments along with EPA responses are included below. The first comment was submitted by a representative from the United States Fish and Wildlife Services (FWS) and the remaining five were submitted by Veolia.

Comment 1: Ms. Carrie Marr from FWS submitted a comment on the draft permit, which stated the following:

“The Arizona ES Office of the Fish and Wildlife Service received the fact sheet for the EPA's proposed PCB permit renewal for the Veolia Environmental Services Technical Solutions facility on West Jefferson Street in Phoenix, Arizona.

The endangered species determination in the Statement of Basis, Fact Sheet, and draft permit states that the permit renewal ‘will not affect any listed species or designated critical habitat’. For my records, I would like you to clarify which of the three types of effects determinations EPA is making: no affect; may affect, but is not likely to adversely affect; or may affect, is likely to affect. For your information, if EPA makes a no affect determination, then no further consultation with the FWS is required. If EPA makes a ‘may affect, but is not likely to adversely affect’ determination, then EPA needs to request informal consultation with FWS.

I recommend revising Appendix E of the draft TSCA permit with the correct terminology. Also note that the document in Appendix E of the draft TSCA permit is not a biological opinion. You could label Appendix E ‘Biological Evaluation’ or ‘[Endangered Species Act] ESA Determination’. Typically, EPA provides the rationale for species/habitat determinations in a Biological Evaluation. Then, FWS responds with a concurrence letter or biological opinion through the informal or formal consultation process, respectfully, as appropriate.

Also, in case you haven’t heard the FWS recently switched to IPaC, a new system for determining project overlap with T/E species (<http://ecos.fws.gov/ipac/>). I attached an informational notice that our office developed for agencies to use when requesting a species list. If you have any questions about how to use IPaC or when it’s appropriate to use it, let me know. Thank you for your continued coordination.”

Response to Comment 1: In response to the written comment above, EPA changed the titles in Appendix E of the TSCA Approval and Appendix B of the Final Statement of Basis to “Endangered Species Act Determination”. EPA also updated the ESA Determination using FWS’s new IPaC system by incorporating the terminology recommended by FWS. EPA used IPaC to provide a definitive list of threatened or endangered species to address in the ESA Determination. EPA’s updated ESA Determination was conducted on August 20, 2015, and EPA made a ‘no affect’ determination. EPA also contacted FWS by telephone on August 24, 2015, and obtained technical assistance on our methods and conclusions. These changes are reflected in Appendix E of the Approval and Appendix B of the Statement of Basis, both dated September 30, 2015.

Comment 2: Page 9, Section IV G.10.iv: This condition indicates that a fire suppression unit shall be maintained at the facility. Provide clarification on the type of fire suppression unit that EPA expects Veolia to maintain at the facility.

Response to Comment 2: EPA understands that Veolia is fully in compliance with Arizona fire codes by maintaining fire extinguishers at the facility. The fire extinguishers at the Facility serve as adequate fire suppressant units. In addition, Veolia has protocols in-place for ensuring that any fire that starts at the facility is addressed in an appropriate manner. This is documented in Veolia’s Contingency Plan, which is physically located at the Facility, and was prepared in accordance with requirements set forth in 40 C.F.R. § 264.51(b). Preparation and maintenance of a Contingency Plan is a Resource Conservation and Recovery Act (RCRA) requirement, and is therefore addressed in the RCRA Approval issued by the Arizona Department of Environmental Quality (ADEQ). Since maintaining portable fire extinguishers, fire control equipment, spill control equipment and decontamination equipment are already mentioned as a condition in

Section IV G.10.iii of the Approval, EPA has removed the condition in Section IV G.10.iv from the Approval.

Comment 3: Page 19, Section V G.1: This condition indicates that “once a quarter, Veolia shall use a third party contractor to collect the wipe samples”. This timeframe is a typo, the condition should state that “once a year, Veolia shall use a third party contractor to collect the wipe samples”.

Response to Comment 3: EPA agrees with the comment and has changed the condition to “Once a year, Veolia shall use a third party contractor to collect the wipe samples.”

Comment 4: Page 22, Section VI, B.3 reads “Recovery of metals from PCB-Contaminated and PCB Transformers is prohibited.” Veolia suggests including the following clarification language at the end of this statement: “at the Veolia Facility”.

Response to Comment 4: EPA agrees with the comment and has provided additional clarification to the condition by modifying it as following: “Recovery of metals from PCB-Contaminated Transformers and PCB Transformers is prohibited at the Facility.”

Comment 5: Page 23, Section VI, B.8: This condition indicates that “The internal surfaces of the drained equipment must be flushed three times with a solvent containing <50 ppm PCBs and allowed to stand for at least 18 continuous hours, after which the solvent is thoroughly removed.” Veolia inquired as to why the equipment must be flushed three times. The TSCA regulation requires that the equipment be flushed only once. Also, this draining should be specific to transformers. Lastly, this should apply to transformers to be disposed of at a chemical waste landfill in accordance with 40 C.F.R. § 761.75.

Response to Comment 5: EPA agrees with this comment. The triple rinse requirement in this condition is an error. EPA has modified the language to indicate that “the internal surfaces of drained transformers to be disposed of at a chemical waste landfill in accordance with 40 C.F.R. § 761.75, shall be flushed once with a solvent containing <50 ppm PCBs. Solvent-filled transformers shall be allowed to stand for at least 18 continuous hours, after which the solvent shall be thoroughly removed.”

Comment 6: When should Veolia submit the financial assurance adjustment for inflation in 2016?

Response to Comment 6: Veolia shall submit an adjustment to the financial assurance mechanism to reflect: (1) the revised cost estimate provided in Appendix E of the Renewal Application, and (2) the annual inflation rate adjustment. Veolia shall carry this out within 60 days prior to the anniversary date of the establishment of the financial instrument used to demonstrate financial responsibility for closure, in accordance with 40 C.F.R. § 761.65(f)(2). Veolia’s most recent financial assurance mechanism, in the form of a letter of credit, became effective on September 10, 2010. The letter of credit expired on

September 10, 2011, however, the expiration date was and shall continue to be automatically extended for a period of 1 year on each successive expiration date, unless, at least 120 days before the current expiration date, EPA and Veolia are notified by certified mail that the financial institution has decided not to extend the letter of credit beyond the current expiration date.

Since the latest financial instrument was established on September 10, 2010, the financial assurance mechanism for 2016 and subsequent years that the Facility is active, shall be adjusted within 60 days prior to September 10 of each year that this financial instrument is effective. Therefore, for 2016, the increase to the cost estimate as well as adjustment for inflation shall be reflected as an amendment to the letter of credit, and shall be submitted by Veolia within 60 days prior to September 10, 2016.