

PCB Approval Decision and Response to Public Comments

**US Ecology Nevada, Inc.
Beatty, Nevada
U.S. EPA ID: NVT330010000**



**Issued by
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San Francisco, California**

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1. Executive Summary

The U.S. Environmental Protection Agency, Region 9 (“U.S. EPA” or “Agency”) is issuing an Approval (permit) for US Ecology Nevada, Inc. (“US Ecology”), as facility operator, to continue to operate a commercial polychlorinated biphenyl (“PCB”) storage and chemical waste landfill facility in Beatty, Nevada (“Facility”) and expand the area available for disposal of PCBs. This PCB Approval Decision and Response to Public Comments (“PCB Approval Decision”) explains and provides U.S. EPA’s rationale for issuing the Approval. This PCB Approval Decision also responds to public comments U.S. EPA received on the “Proposed Approval for Commercial Storage and Disposal of Polychlorinated Biphenyls (PCBs), US Ecology Nevada, Inc., Beatty, Nevada,” July 25, 2012 (“July 2012 Proposed Approval”), and the “Statement of Basis, Proposed Approval for Commercial Storage and Disposal of Polychlorinated Biphenyls (PCBs), US Ecology Nevada, Inc., Beatty Nevada,” July 25, 2012 (“July 2012 Statement of Basis”). The July 2012 Statement of Basis presented and supported U.S. EPA’s Proposed Approval for US Ecology to manage PCB wastes at the Facility, and is included in the Administrative Record (“AR”).

U.S. EPA’s July 2012 Proposed Approval was subject to a 45-day public comment period that began on August 10 and ended on September 24. On September 13, U.S. EPA conducted an informational public meeting and hearing for the Proposed Approval. U.S. EPA received a total of 10 public comments, from two commenters, on the July 2012 Proposed Approval and July 2012 Statement of Basis. The public comments and U.S. EPA’s response are discussed in Section 3 below.

The Approval is being issued pursuant to Section 6(e)(1) of the Toxic Substances Control Act (“TSCA”) of 1976, 15 U.S.C. § 2605 (e)(1), and 40 C.F.R. Part 761, including any amendments or revisions thereto. The Approval (“TSCA Approval” or “Approval”) will allow continued disposal of PCBs in the Trench 11 landfill, storage of PCBs, and limited treatment for disposal in two stabilization tanks. The Approval will also, for the first time, authorize PCB disposal in the Trench 12 landfill that has been receiving hazardous wastes since 2008 pursuant to a Resource Conservation and Recovery Act (“RCRA”) permit issued by the State of Nevada. The Approval also includes the following new Waste Management Units (“Units”): Treatment Pans 4 and 5 (batch stabilization tanks), PCB Tank Truck Loading Pad, and the Evaporation Tank.

The Approval is based on the written renewal application titled “Toxic Substances Control Act (TSCA) Permit Renewal Application, US Ecology Nevada, January 8, 2010” as revised on September 24, 2010, February 9, 2011, May 17, 2011 and December 15, 2011 (collectively the “Renewal Application”).

US Ecology is currently operating under an Approval to manage PCB wastes issued by U.S. EPA in 1996. On July 1, 2000, US Ecology submitted an application to renew the 1996

Approval prior to its expiration on January 11, 2001. The submittal of the renewal application in 2001 administratively extended the terms of the 1996 Approval. US Ecology's January 8, 2010 Renewal Application seeking a renewal and modification superseded all earlier applications and serves as the basis for this Approval.

U.S. EPA has concluded, based upon Agency review of the Renewal Application, supporting documents, and the public comments, that this Approval for US Ecology satisfies the requirements of TSCA and 40 C.F.R. Part 761 for storage of PCBs and for disposal of PCBs in a chemical waste landfill. U.S. 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. § 761.75, U.S. EPA's issuance of this Approval is consistent with Section 106 of the National Historic Preservation Act, Environmental Justice per Presidential Executive Order 12898, and Section 7 of the Endangered Species Act. U.S. EPA has evaluated the Renewal Application and its supporting documents along with the public comments and determined that the issuance of the TSCA Approval for the US Ecology Facility is in compliance with these other requirements.

For additional details on U.S. EPA's rationale for issuing the Approval, see the July 2012 Statement of Basis.

2. Introduction

The US Ecology Facility is located in the Amargosa Desert on an 80 acre site near Highway 95 about 100 miles northwest of Las Vegas, Nevada. The closest city is Beatty, Nevada, which is located approximately 11 miles northwest of the Facility. The Facility treats, stores and disposes of hazardous waste, PCBs, and non-hazardous industrial material. The site is owned by the State of Nevada and operated by US Ecology.

This PCB Approval Decision explains and justifies U.S. EPA's issuance of a TSCA Approval for the US Ecology Facility in Beatty, Nevada, to store, treat for disposal, and dispose of PCB wastes. It contains the public comments U.S. EPA received on the Proposed Approval, U.S. EPA's response to the public comments, the changes made to the final Approval as a result of the public comments, and a table showing the units being approved for PCB waste management at the US Ecology Facility.

This PCB Approval Decision is organized into the following sections: Section 1 - Executive Summary, Section 2 - Introduction, Section 3 - Units Approved for PCB Waste Management, and Section 4 - Approval Decision and Public Comments.

3. Units Approved for PCB Waste Management

The Approval authorizes US Ecology to store, treat for disposal, and dispose of PCB wastes at the Facility as described in the table below:

Table 1
Approved PCB Units and Maximum Capacities

Waste Management Unit Name	Type and Number of Units	Authorized Activity	Maximum Total Capacity	Location in Approval
PCB Storage and Processing Building	1 Building	Storage	59,400 gallons	Section V
PCB Tank Farm	5 Tanks	Storage	28,000 gallons	Section V
PCB Tank Truck Loading Pad*	1 Pad	Waste Transfer	Not Applicable	Section V
Stabilization Tanks (a.k.a. "Treatment Pans")	Treatment Pans 4 and 5	Treatment for Disposal	137,000 gallons per day	Section VI
Evaporation Tank	1 Tank	Treatment for Disposal	10,000 gallons	Section VI
Trench 11	1 Landfill	Disposal	2.36 million cubic yards	Section VII
Trench 12	1 Landfill	Disposal	1.66 million cubic yards	Section VII

*The PCB Tank Truck Loading Pad is an ancillary or support unit to the PCB Tank Farm. The Pad, which will be constructed after issuance of the Approval, will provide containment for tanker trucks that receive PCB liquids from the PCB Tank Farm.

For additional information on the units being approved for PCB waste management, see the July 2012 Statement of Basis.

4. Approval Decision and Public Comments

This section discusses the public comments U.S. EPA received on the Proposed Approval, U.S. EPA's response to the comments, and the changes that were made to the Proposed Approval as a result of the public comments.

4.1. Public Participation

On August 10, 2012, U.S. 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 for the US Ecology Facility. On September 13, 2012, U.S. EPA conducted an informational public meeting and hearing for the Proposed Approval. The comment period closed on September 24, 2012.

Seven people attended the public meeting and hearing held on September 13, 2012. U.S. EPA received no 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.

U.S. EPA received a total of 10 written comments from two organizations on the Proposed Approval. One comment came in an email and the second in standard U.S. Postal Service mail. No comments were received on U.S. EPA's determination that historic properties will not be affected by the Approval decision. U.S. EPA made the determination based on the requirements of the National Historic Preservation Act ("NHPA").

U.S. EPA is issuing this Approval for the US Ecology Facility based on its review of the AR and public input. The Agency considered the 10 public comments it received before making its final decision. Based on all the information available to date, U.S. believes that PCB waste management operations, as allowed by this Approval, satisfy the requirements of TSCA and 40 C.F.R. Part 761 for storage of PCBs and for disposal of PCBs in a chemical waste landfill. In addition, U.S. 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 AR contains the documents and information that U.S. EPA considered in making this final decision to issue the Approval. The AR is physically located at the U.S. EPA Region 9 Office, 75 Hawthorne Street, San Francisco, CA 94105.

Satellite information repositories containing the most pertinent documents and an index of the AR are located at the Beatty Library, 400 North 4th Street, Beatty Nevada 89003-0129 and at the Nevada Division of Environmental Protection ("NDEP") office in Las Vegas, Nevada, at 2030 E. Flamingo Rd., Ste. 230, Las Vegas, NV 89119. If a document listed in the index of the AR cannot be found at the Beatty Library or NDEP Office, community members may call Ronald Leach at (415) 972-3362 and a copy will immediately be made available.

The most pertinent documents used in the decision making process can also be found on U.S. EPA's website at www.epa.gov/region9/pCBS/usecology/.

4.2. Public Comments on the Proposed Approval

The 10 public comments along with U.S. EPA responses are included below. The first 9 comments were submitted by US Ecology and the 10th was submitted by a local government official.

Comment 1: Throughout the permit EPA references specific US Ecology Nevada (USEN) documents with specific dates (example on page 5, C.1; Waste Analysis Plan, October 2009). USEN requests EPA adjust language to read “Waste Analysis Plan (current version). This change would apply to all USEN plans that are referenced in the permit.

Reason for request:

Once issued, the TSCA permit will be authorized for 10 years. From time to time it may become necessary to update various plans (e.g. WAP or Contingency Plan). If the TSCA Permit references specific revisions of the plans then USEN will have to maintain multiple versions of those plans which may become complicated and burdensome. (Scott Wisniewski, US Ecology Nevada, Inc., September 21, 2012 email)

Response to Comment 1: U.S. EPA does not agree with the changes proposed in the comment. The TSCA Approval as well as the RCRA permit issued by the State of Nevada require defined and specific provisions in order to be enforceable by U.S. EPA and the NDEP, respectively. Using the “most current version” of a plan incorporated by reference into the Approval would not be sufficiently defined or specific to make the Approval enforceable. In addition, using the most current version of a plan would make the Approval subject to change without a formal modification, which is not allowable.

To the extent that US Ecology is concerned about the administrative burden of doing a formal modification for each change in a given plan, U.S. EPA will allow US Ecology to group multiple changes into a single modification request. Also, U.S. EPA will coordinate with the NDEP to synchronize the process for making modifications to the TSCA Approval and the RCRA Permit.

Comment 2: Page 7, Section IV F.3 “The Oral notification shall occur as soon as possible after US Ecology becomes aware of the incident, but no later than 24 hours after the incident...”. USEN suggests 24 hours after the incident or the next business day.

Reason for request:

If an incident occurs late Friday afternoon or over the weekend USEN would not be able to make the oral notification within 24 hours and therefore would be out of compliance with this permit condition. Changing the language to “24 hours or next business day”

allows sufficient time for USEN to make the oral notification. (Scott Wisniewski, US Ecology Nevada, Inc. September 21, 2012 email)

Response to Comment 2: U.S. EPA agrees with the comment and will change the Approval language to allow “24 hours or by noon of the next business day, whichever is later” for making oral notifications of any incidents.

Comment 3: Page 12, Section IV, H.4 reads “US Ecology shall document all inspections using the inspection report forms contained in the Facility Inspection Plan, US Ecology Nevada, dated March 2010 (Revised May 2011)”. USEN suggests changing language to “US Ecology shall document all inspections using the most current inspection reports”.

Reason for request:

Inspections forms may be updated and improved as necessary. USEN would prefer to have the option of using the updated forms without updating the TSCA Permit Application. (Scott Wisniewski, US Ecology Nevada, Inc. September 21, 2012 email)

Response to Comment 3: U.S. EPA does not agree with the suggested change. See U.S. EPA’s response to Comment 1.

Comment 4: Page 15, Section IV, L.2 reads “The Level of financial assurance shall always be greater than the total cost estimate for closure...” USEN would like more clarity as to what EPA means by funding will always be greater.

Reason for request:

USEN believes the statement is vague in stating funding will always be greater. USEN updates the Closure/Post-Closure amounts annually and confirms the amount in the trust held by the state of Nevada is greater than or equal to the Closure/Post-Closure amount. (Scott Wisniewski, US Ecology Nevada, Inc., September 21, 2012 email)

Response to Comment 4: U.S. EPA agrees with the comment and will adjust the Approval language to read that financial assurance shall always be greater than or equal to the cost estimate for Closure/Post Closure. It is important that the level of financial assurance never be allowed to fall below the cost estimate for Closure/Post Closure.

Comment 5: Page 17, Section IV, N.5.a references an Information Repository. USEN would like more information regarding the Information Repository.

Reason for request:

USEN currently submits the annual PCB report to EPA Region IX. It is not clear if a second report needs to be submitted to the Information Repository or if one report to EPA Region IX is sufficient. If a second report is required for the repository a mailing

address will be required. (Scott Wisniewski, US Ecology Nevada, Inc., September 21, 2012 email)

Response to Comment 5: The submission of a single PCB annual report to U.S. EPA is sufficient. The Approval language will be adjusted to delete the requirement for submission of a second PCB annual report to the Information Repository.

Comment 6: Page 22, Section V, E.2, this section references the American Ecology Standard Operating Platform (AESOP). USEN suggests not referring to the database by name.

Reason for request:

US Ecology Inc. is in the process of developing a completely new database/tracking system that will be implemented in the next year. This newly developed database will not be called AESOP. Once the new database is in use USEN would not be in compliance with this permit condition. (Scott Wisniewski, US Ecology Nevada, Inc., September 21, 2012 email)

Response to Comment 6: U.S. EPA agrees with the comment and will delete from the Approval all references to the American Ecology Standard Operating Platform (AESOP). A database will be discussed without referencing a specific name.

Comment 7: Page 22, Section V, E.5, US Ecology shall store all containers and PCB Items on pallets while being stored. USEN suggest changing the language to give alternate methods for storing PCB and PCB Items off the ground.

Reason for request:

Occasionally USEN may use wooden blocks or other similar devices to shore up larger PCB Items such as transformers. USEN would prefer not to be restricted to the use of pallets to store PCB items off the ground. (Scott Wisniewski, US Ecology Nevada, Inc., September 21, 2012 email)

Response to Comment 7: U.S. EPA agrees that pallets, wooden blocks or other equivalent structures could be used to store PCBs and PCB Items off the floor in the PCP Storage and Processing Building. The Approval language contained in Condition V.E.5 will be revised to allow more flexibility in how PCBs and PCB Items are kept off the floor.

Comment 8: Page 30, Section VI, A, contains incorrect information. Treatment Pans 4 and 5 have double steel liners but the Evaporation Tank does not. The Evaporation Tank is completely lined with a HDPE liner.

Reason for request:

Update section to accurately reflect equipment being used at USEN. (Scott Wisniewski, US Ecology Nevada, Inc., September 21, 2012 email)

Response to Comment 8: U.S. EPA will revise the Approval to reflect that the Evaporation Tank has an HDPE liner.

Comment 9: Page 50, Section VII, J.9, states “At least eighteen months prior to the end of the most recent post-closure care period, US Ecology shall submit to U.S. EPA an approval modification request...” USEN interprets this statement to mean that regardless of whether or not an additional 30 years of post-closure care is necessary USEN is required to submit the approval modification request. USEN suggests the language be changed such that if an additional post-closure care is not necessary then an approval modification request is not required. Requested change “If U.S. EPA determines additional post-closure care is required, US Ecology will submit to U.S. EPA an approval modification request in accordance with Subsection VIII.A of this approval, that contains an updated post-closure care plan that renews the post-closure care period for an additional thirty years. The approval modification request will be submitted at least eighteen months prior to the end of the most recent post-closure care period.”

Reason for request:

If an additional 30 years of post-closure care is not necessary USEN should not be required to submit the Approval modification request as outlined in this section. (Scott Wisniewski, US Ecology Nevada, Inc., September 21, 2012 email)

Response to Comment 9: U.S. EPA agrees with the comment in principle, but not with the particular approach suggested by the comment. U.S. EPA will add language to the Approval that allows US Ecology to submit a demonstration to U.S. EPA showing why it believes that an additional 30-year post-closure care period is not necessary. However, the demonstration must be submitted to U.S. EPA 18 months or more before the end of the most recent post-closure care period. Any finding that US Ecology need not continue post-closure care for another 30 years would need to be based upon a sufficient evidentiary record. If U.S. EPA approves the demonstration, US Ecology will not be required to submit the Approval modification request for an additional 30-year post-closure care period.

Comment 10: I am writing in strong support of the renewal of the PCB Approval (Permit) for US Ecology Nevada, Inc. As you are aware, US Ecology Nevada has safely managed PCB wastes since 1978 and recent studies have concluded that the facility poses no threat to human health and environment. In addition, this facility provides a necessary and valuable service to Nevada waste generators.

The US Ecology Nevada facility provides well-paying jobs in an economically distressed area that has been heavily impacted by the downturn in the economy. US Ecology also provides significant civic and economic benefits to businesses and citizens who reside in Nye County and the State of Nevada. I have always considered them to be excellent corporate citizens who take their responsibility to the community at large very seriously.

To preserve US Ecology's contributions to the local community, the state and local economy, and the environmental benefits of providing safe and secure disposal of hazardous wastes generated within our state, I wholeheartedly support the renewal of their PCB Approval.

I appreciate the opportunity to comment on US Ecology Nevada's proposal and would be happy to address any questions or concerns you may have. I can be reached in my home office at (775) 482-9466 or on my cell phone at (775) 482-4533. (Joni Eastley, Nye County Board of County Commissioners, September 5, 2012 letter to U.S. EPA)

Response to Comment 10: U.S. EPA acknowledges the comment.

4.3. Differences Between the Proposed and Final Approval

In response to public comments, U.S. EPA made changes to the final Approval as discussed below. Section 6.B (evaporation tank discussion) of the July 2012 Statement of Basis was also revised to be consistent with the changes made to Subsection VI.A of the Approval.

Condition IV.F.3, last sentence, is revised to read as follows: “..... *The oral notification shall occur as soon as possible after US Ecology becomes aware of the incident, but no later than 24 hours or by noon of the next business day, whichever is later, after the incident [40 C.F.R. § 761.65(d)(4)(iv), 40 C.F.R. § 761.75(c)(3)(ii)]*”.

Condition IV.L.2, last sentence, is revised to read as follows: “.....*The level of financial assurance funding shall always be greater than or equal to the total cost estimate for closure and post-closure care of the units established pursuant to Subsections IV.J and IV. K [40 C.F.R. § 761.65(g), 40 C.F.R. § 761.65(d)(4)(iv), 40 C.F.R. § 761.75(c)(3)(ii)]*”.

Condition IV.N.5.a, second sentence, is revised to read as follows: “.....*On July 15 of each year, US Ecology shall submit to U.S. EPA the annual report required by 40 C.F.R. § 761.180(b)(3) for the previous calendar year. The annual report shall be sent to:*”

Condition V.E.2 is revised to read as follows: “*US Ecology shall operate and maintain a database and barcode system to track the volumes and locations of all PCB wastes throughout the Facility [40 C.F.R. § 761.65(d)(4)(iv), 40 C.F.R. § 761.75(c)(3)(ii)]*”.

Condition V.E.5 is revised to read as follows: *“US Ecology shall store all containers and PCB Items off the floor on pallets or other equally stable support systems while being stored in the PSPB [40 C.F.R. § 761.65(d)(4)(iv), 40 C.F.R. § 761.75(c)(3)(ii)].”*

Subsection VI.A is revised to read as follows: *“US Ecology is permitted by the State of Nevada to treat hazardous waste in five Stabilization Tanks or “Treatment Pans” and the Evaporation Tank. Treatment Pans 1, 2 and 3, which are located outside, will be used in the future exclusively for treatment of hazardous waste (no PCBs). However, due to past operations involving PCBs, Treatment Pans 1, 2 and 3 are included in the Facility Closure Plan for this Approval. PCBs may, under special circumstances, be processed for disposal in Treatment Pans 4 and 5, and in the Evaporation Tank. Treatment Pans 4 and 5 are located inside the Container Management Building, are installed below ground, and have double steel liners with a leak detection system. The Evaporation Tank is located outside, is installed below ground, and is constructed of concrete with a high density polyethylene liner and leak detection system. The location of Treatment Pans 4 and 5 and the Evaporation Tank are shown on Figure 2”.*

Condition VII.J.9 is revised to read as follows: *“At least eighteen months prior to the end of the most recent post-closure care period, US Ecology shall submit to U.S. EPA an Approval modification request, in accordance with Subsection VIII.A of this Approval, that contains an updated post-closure care plan that renews the post-closure care period for an additional thirty years. The modification request shall also include a revised post-closure care cost estimate and corresponding financial assurance mechanism. US Ecology may submit, prior to the eighteen month time period, a demonstration to U.S. EPA showing why it believes that an additional 30-year post-closure care period is not necessary. If U.S. EPA approves the demonstration, US Ecology will not be required to submit a new Approval modification request. US Ecology shall continue to submit 30-year post-closure renewal modification requests until such time that U.S. EPA determines that post-closure care is no longer necessary. Unless U.S. EPA approves any Approval modification request submitted pursuant to this Condition, US Ecology shall continue post-closure care activities consistent with its current post-closure care plan [40 C.F.R. § 761.65(d)(4)(iv), 40 C.F.R. § 761.75(c)(3)(ii)]”.*