



January 30, 2018

Alexis Strauss
Environmental Protection Agency, Region 9
Acting Regional Administrator
75 Hawthorne St.
San Francisco, CA 94105

Arthur A. Elkins, Jr.
Environmental Protection Agency
Office of the Inspector General
1200 Pennsylvania Avenue, N.W. (2410T)
Washington, DC 20460

Dear Ms. Strauss and Mr. Elkins:

This letter is written by the Environmental Integrity Project on behalf of Environment California to raise concern over serious and ongoing violations of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 *et seq.*, at the PBF Energy Torrance Refining Company, LLC (Torrance Refinery) located at 3700 W. 190th Street, Torrance, California. Specifically, we request that:

1. the Environmental Protection Agency Office of the Inspector General (EPA IG) investigate why EPA has taken no enforcement against this facility and report its findings to the public;
2. EPA Region 9 initiate formal enforcement against the Torrance Refinery for the ongoing violations described in this letter; and
3. EPA review the authorization of RCRA's hazardous waste program in the State of California to ensure appropriate implementation, including proper training of inspectors and timely follow up of enforcement referrals to the state from EPA .

One of RCRA's primary objectives is to ensure facilities that generate and manage hazardous wastes minimize risk to human health and the environment. EPA achieves this goal through proper permitting and compliance assistance, and when appropriate, by taking enforcement against those who violate the law. The purpose of enforcement is to return violating facilities to compliance, deter future noncompliance, and level the playing field by capturing the economic benefit of noncompliance (ie, what a facility saved by not complying with the law).

When EPA fails to satisfy this objective, EPA fails the American public. According to a March 2017 EPA inspection report, **the Torrance Refinery has been storing onsite thousands of tons of unpermitted hazardous waste, a large portion of which has been stored for more than 26 years.** To our knowledge, EPA has formally decided not to enforce against the Torrance Refinery for these decades-long and serious violations.¹

A decision to forego federal enforcement appears inconsistent with EPA's FY 2016-2017 Office of Enforcement and Compliance Assurance National Program Manager Guidance, which includes a section on critical compliance monitoring and enforcement activities for RCRA.² For this reason, we are asking that EPA explain in a transparent manner – taking into account the State of California's problematic history with this refinery, as detailed below – why EPA nonetheless referred the violations to the state for enforcement.

Facility Background

Built in 1928, the Torrance Refinery had been owned and operated by what became ExxonMobil until acquired by PBF Holding Company LLC in September 2015. One of the country's smaller refineries, it currently sells approximately 5 million gallons of low emissions gasoline per day in Southern California, Arizona, and Nevada. In addition to gasoline, the refinery also produces jet fuel, diesel fuel, liquefied petroleum gases (LPG), coke, and sulfur. The Torrance Refinery covers 750 acres and employs approximately 625 employees and 550 contractors.³

EPA Region 9's December 2016 Inspection

On December 5 through December 7, 2016, EPA Region 9 conducted a RCRA

¹ According to EPA's Enforcement and Compliance History Online (ECHO) database, Torrance Refinery has been in Significant Noncompliance since the inspection in December 2016. See, <https://echo.epa.gov/detailed-facility-report?fid=110069359063#pane3110069359063>. Moreover, according to EPA's Hazardous Waste Civil Enforcement Response Policy, and because the Torrance Refinery is in Significant Noncompliance, an enforcement action (either a referral to the Department of Justice or the issuance of a final administrative order) against Torrance Refinery should have been finalized no later than December 2017. See, <https://www.epa.gov/sites/production/files/documents/finalerp1203.pdf>, pg. 12.

² See, <https://www.epa.gov/sites/production/files/2015-04/documents/fy1617oecanpmpguidance.pdf>, pg. 29-31.

³ The United States Chemical Safety and Hazard Investigation Board's Investigation Report, *The ExxonMobil Torrance Refinery, Electrostatic Precipitator Explosion*, No. 2015-02-I-CA (published May 2017), pgs. 8-9, available at <http://www.csb.gov/exxonmobil-refinery-explosion/>. See also, EPA Region 9's March 7, 2017 Inspection Report, pg. 1 (Attachment 1).

compliance inspection at the Torrance facility. Here is what the inspection report, which was transmitted to the Torrance Refinery on March 7, 2017, relates:

1. Torrance had been storing nearly 285 tons of listed⁴ hazardous waste (K049) in a wastewater treatment plant tank (Tank 170X1) without a permit for more than 26 years. The waste was shipped off site between August and September 2016.
2. At the time of the inspection, Torrance was in the process of shipping off-site 329 twenty-cubic yard bins of hazardous waste (K049) from another wastewater treatment plant tank (Tank 200X37). This hazardous waste also had been stored without a permit for more than 26 years.
3. Torrance operates a Materials Recovery Unit to recover oil-bearing materials to render them more suitable for re-insertion into its coker. However, due to various factors, the EPA inspectors determined that this material was for the most part not being reprocessed and instead was being indefinitely stored, which constitutes disposal. At the time of the inspection, approximately 7,525 tons (assuming all 500 twenty cubic yard bins were full) of these oil-bearing materials (hazardous waste codes K051, F037, F038, and other characteristic⁵ wastes) were being stored at various locations. These wastes are being stored and disposed without a permit.
4. Because the materials that passed through the Materials Recovery Unit did not meet the exemption requirements for oil-bearing materials (ie, they were hazardous wastes), processing of these materials at this unit constitutes treatment without a permit. Moreover, because these materials were treated and stored improperly as nonhazardous waste, the Torrance Refinery also failed to make a proper hazardous waste determination.
5. Listed hazardous waste (float floc – K048) was being stored without a permit in an in-ground concrete pit not designed for hazardous waste storage.

As the above illustrates, this refinery has been in major violation of the most basic RCRA requirements, and as a result avoided proper permitting and the costs related to proper handling of hazardous wastes for decades. According to a recent article in the Los Angeles Times, which interviewed one of the now-retired EPA inspectors who inspected the facility in December 2016, EPA had been poised to take formal action against this facility but then changed course after the change in Administration following President Trump's election:

⁴ A listed hazardous waste is a solid waste generated from common manufacturing and industrial processes, specific industries, and also can be generated from discarded commercial products. *See* 40 C.F.R. Part 261.

⁵ A characteristic hazardous waste is a solid waste that exhibits one of four hazardous characteristics defined in 40 CFR Part 261 subpart C — ignitability (D001), corrosivity (D002), reactivity (D003), and toxicity (D004 - D043).

[Kandice] Bellamy said the federal team was dismayed EPA higher-ups did not pursue the long list of potential violations they drew up, many of them serious. Instead, the case was turned back over to the state.

We had the sense that they [EPA] had decided not to take on any of these challenging type cases because any refinery operator and their attorney could just appeal directly to the administrator in Washington, Bellamy said. And their pleas would most likely be seen favorably by this administration.⁶

As reported in the newspaper, EPA made the formal determination not to pursue enforcement against the Torrance Refinery. Instead, in April 2017, EPA referred the matter back to the California EPA, which for decades, and as more fully described below, has failed to discover major violations that have been ongoing since the time the state received authorization to implement the program in 1992.⁷

To date, no RCRA enforcement action has been initiated by California EPA. Given the history of the state's compliance oversight of this facility, its apparent failure to initiate appropriate enforcement is no surprise.

Permitting, Inspection, and Compliance History

RCRA Section 3006(b), 42 U.S.C. 6926(b), known as RCRA Subtitle C, establishes standards for the generation, transportation, treatment, storage, and disposal of hazardous waste in the United States.

Under RCRA, anyone who owns or operates a facility where hazardous waste is treated, stored, or disposed, must notify EPA and potentially apply for an operating permit. The permitting program is important to the cradle-to-grave management system for hazardous wastes, which prevents dangerous releases and avoids costly Superfund cleanups.

The permit application process has two parts. A Part A application consists of a relatively simple form that requests basic information about the facility and puts EPA or the delegated state agency on notice that hazardous waste is being handled onsite. Once the Part A is submitted, and if required based on the types and quantities of wastes managed, an owner or operator may be required to submit a much more detailed application known as the Part B in order to obtain an operating permit. Regardless of permitting status, any owner or operator of a facility that handles hazardous waste must adhere to the regulations governing hazardous

⁶ LA Times, "One year in, Trump's environmental agenda is already taking a measurable toll," January 18, 2018, available at: <http://www.latimes.com/politics/la-na-pol-trump-environment-20180118-story.html>.

⁷ EPA letter to California EPA dated April 25, 2017 (Attachment 2).

waste management, either found in 40 C.F.R. Part 265 (for those without an operating permit) or 40 C.F.R. Part 264 (for permitted facilities).

Consistent with RCRA, the State of California received authorization to implement the Subtitle C hazardous waste program in 1992. EPA Region 9 has a federal grant with California EPA's Department of Toxic Substances Control to carry out the RCRA hazardous waste program in the state.⁸ Section IV of the 2015-2017 grant workplan states "If U.S. EPA makes enforcement referrals to the EERD⁹ Division Chief for inspections conducted by U.S. EPA, EERD will take appropriate enforcement in consultation with U.S. EPA." In the most recent grant award in September 2017, EPA Region 9 awarded \$22.94 million to California EPA's Department of Toxic Substances Control to support their hazardous waste management reduction activities.¹⁰

Under California law, environmental regulation, including compliance assurance and enforcement, is largely implemented by Certified Unified Program Agencies (CUPAs), of which there are 81 statewide. California EPA oversees the CUPAs hazardous waste management and enforcement programs though it also retains inspection and enforcement authority.

The State of California provides information to the public, including hazardous waste inspection reports, on ENVIROSTOR.¹¹

According to ENVIROSTOR records, California has discovered no violations at the Torrance Refinery since 2001.¹² The last inspection conducted by the state occurred in 2011. It is our understanding that the local CUPA assumed compliance inspection responsibility for this refinery from the date of the last 2011 state inspection to the present. Upon review of enforcement information available on EPA's online database, Enforcement and Compliance History Online (ECHO), it appears that the CUPA, in this case the Los Angeles County Fire Department, was unaware of the long-standing violations discovered by EPA inspectors during their site visit in December 2016.

In fact, the entire RCRA permitting and compliance history of this facility, by the state's own admission, is completely muddled. Here is what California EPA provides

⁸ See, <https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/upload/RCRA-Work-Plan-05-15-14.pdf>.

⁹ "EERD" is the Enforcement and Emergency Response Division within California EPA's Department of Toxic Substances Control.

¹⁰ <https://www.epa.gov/newsreleases/epa-awards-23-million-california-manage-and-reduce-hazardous-waste>.

¹¹ See, www.envirostor.dtsc.ca.gov/public.

¹² ENVIROSTOR, https://www.envirostor.dtsc.ca.gov/public/eeper_profile_report?global_id=3000737

on its ENVIROSTOR website with regard to the Torrance Refinery's RCRA permitting and compliance history:

"It is difficult to piece together the permitting history of the ExxonMobil due to a long history going back to the early 1980's, lack of institutional memory, and incomplete existing documentation available for this site. However, based on our review, the following history of ExxonMobil was constructed:

1. In 1980, ExxonMobil submitted a Part A permit application to USEPA. Consequently, ExxonMobil received an interim status determination in 1981. The interim status was issued for six hazardous waste storage and treatment units at the site. The six units were: 1) Demineralization Wastewater Neutralization Tanks; 2) Oily Water System (includes API separators, stilling Delayed Coker; 4) Foul Water Air Oxidizer, 5) Alkylation Unit Neutralization Basin; and 6) Caustic Storage Tanks.

Note: It is difficult to decipher the units specified in original (1980) Part A. The unit breakdown described here was provided by Mobil facility.

2. In 1982, ExxonMobil submitted a revised Part A to USEPA removing three units (Demineralization Neutralization tanks, Oily Water System, Delayed Coker). The removal was due to statutory and regulatory exemptions that came into effect after the Part A permit application submittal. In 1982, USEPA submitted a letter to ExxonMobil stating they've incorporated the changes in the Part A.

3. In 1985, ExxonMobil again submitted a revised Part A to USEPA removing the remaining three units (Spent Caustic Storage Tank, Foul Water Air Oxidizer, Alkylation Unit Neutralization Basin) from interim status authorization. Reasons for removal of these units were due to changes of operation and applicable regulatory/statutory exemptions. ExxonMobil also submitted variance applications to DTSC for the Demineralizer Tanks, Oily Water System, Alkylation Basin to be exempt from State permitting requirements. Although ExxonMobil removed units from interim status and stated they were generator only, there was no confirmation from either the State or Federal agencies.

4. Due to never receiving a formal confirmation from USEPA or DTSC regarding their status, it appears ExxonMobil continued to pay treatment facility fees while claiming the facility was a generator. Neither DTSC nor USEPA compelled ExxonMobil to either obtain a hazardous waste permit or to go to closure for the six units in interim status after 1988.

5. In 1995, ExxonMobil received Tiered Permitting, Conditional Authorization and Conditional Exemption for two units unrelated to the original Interim Status.

ExxonMobil never received a Part B facility permit from DTSC or USEPA. Additionally, it appears none of the original units, except for possibly Foul Water Oxidizer, underwent the closure process for interim status facilities as required in Chapter 15 of Title 22, California Code of Regulations.

For corrective action, the RWQCB is the lead agency for the cleanup and therefore, information regarding the corrective action is very limited in file. RWQCB Order No 85-87 requiring various oil refineries including Exxon Mobil to conduct investigation of their facility dated 2/25/85 began the WB work at this site. RWQCB has been working on remediation at this site since this time. There also was a document dated 12/16/99 called "Request for Designation of Administering Agency" which states CRWQCB is the agency overseeing Exxon Mobil remediation.

Data was updated with information that could be found/deciphered but not very complete.¹³

The state's confusing description of the Torrance Refinery's hazardous waste units and its RCRA hazardous waste permitting history is concerning. Refineries – even small ones – are very large facilities that generate and use very large quantities of materials that when spent or discarded, meet the definition of hazardous waste. Waste tracking and identification are key components of the RCRA hazardous waste program and regulators, particularly inspectors, must understand the operations – and permitting status – of the facilities that they regulate.

From the information available, it also appears that corrective action (cleanup) at the site is ongoing, dates back to 1985, falls under the umbrella of another regional board (the Los Angeles Regional Water Quality Control Board), but is not coordinated with or much understood, apparently, by the California EPA.¹⁴

In addition to the confusion regarding the Torrance Refinery's RCRA permitting and corrective action history, including whether a permit was even required, the facility experienced a major explosion in February 2015 that could have jeopardized the lives of workers, first responders, and nearby residents. According to the U.S. Chemical Safety and Hazard Investigation Board, which issued a report regarding the explosion in May 2017, the accident constituted a "serious near miss" (a large piece of debris narrowly avoided hitting a tank containing tens of thousands of pounds of highly toxic modified hydrofluoric acid) and was the result of unsafe operating limits and procedures.¹⁵

¹³ ENVIROSTOR,
https://www.envirostor.dtsc.ca.gov/public/hwmp_profile_report?global_id=CAD008354052.

¹⁴ *Id.*

¹⁵ See EN 3.

EPA Policy Regarding Enforcement for Significant Noncompliance

EPA's FY 2016-2017 Office of Enforcement and Compliance Assurance National Program Manager Guidance directs authorized states and EPA regions to make enforcement priority decisions based on a number of factors, including the following:

1. *RCRA noncompliance issues that matter to the impacted community.* In addition to significant community outcry following the 2015 explosion, and packed public meetings, there also are at least two local groups, South Bay FLARE: Families Lobbying Against Refinery Exposure and the Torrance Refinery Action Alliance, both of which were organized to combat safety and environmental issues at the facility. As reported in multiple newspaper articles, citizens are very engaged. This is especially true given that residents were not evacuated as a result of the 2015 facility explosion even though some experienced having ash fall on them at their homes.
2. *Facilities with improper treatment or waste analysis should be considered high priority for enforcement purposes.* As described above, the Materials Recovery Unit is an unpermitted treatment unit. In addition, the thousands of tons of waste stored at the facility for potential treatment at this unit was improperly considered nonhazardous waste because the Torrance Refinery failed to make a proper hazardous waste determination.
3. *Priority should be given to those facilities where there has not been sufficient or meaningful progress regarding corrective action (cleanup) activities.* Given the apparent confusion on the State of California's part regarding the facility's corrective action history, the violations at this facility should constitute an enforcement priority for this reason as well.
4. *EPA should take enforcement where states are not addressing serious noncompliance.* California EPA has been inspecting this facility since at least 2001 and has failed to discover the serious and ongoing violations EPA discovered in its December 2016 inspection. Given this reality, along with the state's confusing recitation of the facility's permitting and corrective action history, there is no reasonable basis upon which to conclude California EPA is equipped or inclined to take timely and appropriate enforcement against the Torrance Refinery for the EPA-identified violations.¹⁶

EPA's guidance clearly demonstrates that enforcement against the Torrance Refinery for the violations discovered in December 2016 by EPA rise to the level of high priority and should be addressed by EPA given the state's longstanding lack of proper compliance evaluation and enforcement regarding this facility. Refineries are large employers and are important economic engines for their host states. For this reason, enforcement against refineries for violations of environmental laws can sometimes become politically charged and difficult to pursue at the state level. This

¹⁶ See EN 2, pgs. 29-31.

is one reason why it is imperative that EPA retain and exercise its enforcement authority when a state has failed to respond adequately.

Conclusion

For the reasons outlined above, the Environmental Integrity Project, on behalf of Environment California, requests that the EPA IG undertake an investigation to determine whether enforcement against this facility was improperly or unreasonably deferred. In addition, the EPA IG should also consider and investigate whether EPA's RCRA program is being adequately implemented by the State of California. More specifically, the EPA IG should investigate the numbers of enforcement case referrals made by EPA to the state from 2012-2017 and the status of each referral as of December 31, 2017.

In the meantime, we request that EPA Region 9 immediately initiate enforcement against this facility for the serious and ongoing violations discovered through its December 2016 inspection. There has already been a serious accident onsite due to mismanagement that resulted in "a near miss" that could have resulted in loss of life. Part of the purpose of RCRA permitting is to ensure that hazardous wastes are managed in a way that minimizes the threat of exposure to humans and the environment. The U.S. Chemical Safety and Hazard Investigation Board has determined that serious mismanagement of the Torrance Refinery was the root cause of the February 2015 explosion. Proper enforcement regarding these RCRA violations and thorough and regular inspections going forward will help ensure future safe operation.

Thank you for your prompt consideration of these serious concerns. Please do not hesitate to contact me should you have any questions or additional matters you wish to discuss.

Best,

Mary E. Greene
Deputy Director
Environmental Integrity Project
1000 Vermont Ave, Suite 1100
Washington, DC 20005
(202) 263-4449
mgreene@environmentalintegrity.org

cc: Michelle Kinman, Clean Energy Advocate, Environment California