RECEIVED
JUN 2 2005
OFFICE OF THE
EXECUTIVE SECRETARIAT

Youth United for Community Action
a project of the Tides Center

YOUTH PROJECT BOARD

Cari Pang Chen
Chair

Ross Cunningham

Melvin Gaines

Vanessa Nisperos

Ali Rahnoma

Shana White

Jessica Woods

ADVISORY BOARD

Sundiata Acoli
Afrikan Cultural Society

Nadinne Cruz

Keisha Evans
Ujima Security Council

Makini Hassan
Malcolm X Grassroots Movement

Jitu Sadiki
Black Awareness Community Development Organization

PROJECT DIRECTOR

Oscar Flores

June 11, 2005

Stephen Johnson, Administrator
United States Environmental Protection Agency
401 M Street, SW
Washington, D.C. 20460

Civil Rights Complaint Against Department of Toxic Substances of Control

Dear Administrator:

Youth United for Community Action ("YUCA") and the Ujima Security Council file this complaint with the United States Environmental Protection Agency because the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) has violated Title VI of the Civil Rights Act of 1964 and the United States Environmental Protection Agency's ("USEPA") implementing regulation, 40 C.F.R. § 7.35, by taking actions that have had and continue to have a discriminatory and disproportionate impact on residents of color and low-income residents of East Palo Alto, California.

DTSC has violated the civil rights of the complainants and other low-income residents and residents of color in East Palo Alto by the following actions:

1) improperly allowing Romic Environmental Technologies ("Romic") to operate in our community with an expired permit for 14 years;
2) taking the unacceptably long period of 11 years to complete a Draft Environmental Impact Report ("DEIR");
3) failing to provide for meaningful notice and opportunity to comment on the Draft EIR by not translating the Draft EIR into Spanish; and by
4) failing to notify residents of our community about serious and numerous violations committed by Romic between 1999 and 2004 that potentially threatened the health and well-being of our community.

These decisions and actions by the state DTSC demonstrate a consistent pattern of significant discriminatory behavior that has a disproportionate impact on the low-income residents and residents of color of East Palo Alto. This clear pattern of discriminatory and disproportionate impact cannot be ignored by the United States Environmental Protection Agency as it has a negative and real impact on the well-being of our community and is a violation of Title VI of the United States Civil Rights Act of 1964 and EPA's implementing regulations.

As a recipient of federal funds, DTSC is prohibited from discriminating on the basis of race in the permitting and regulation of hazardous waste facilities including the Romic facility in East Palo Alto. DTSC has violated Title VI of the Civil Rights Act of 1964 and EPA's implementing regulations by the actions described in this complaint. These violations have and continue to have a disproportionate and discriminatory impact on low-income residents and residents of color in East Palo Alto.

Complainants

Youth United for Community Action (YUCA), a grassroots community organization created, led, and run by young people of color, majority from low-income communities, provides a safe space for young people to empower ourselves and work on environmental and social justice issues to establish positive systemic change through grassroots community organizing. We are based in East Palo Alto, CA and we have been trying to hold Romic and decision-makers accountable to the health and environmental concerns of our community for the last eight years. In those eight years, we have organized to hold the state agency DTSC accountable for the completion of Romic's permit and Environmental Impact Report.

Ujima Security Council is a grassroots, community based organization in East Palo Alto that advocates for environmental and social justice as well as community issues involving land, youth and development. Ujima has been fighting for accountability of Romic since 1989.

Respondent

DTSC is responsible for developing and implementing California's hazardous waste laws and administering federal environmental laws including solid waste laws and Title VI of the Civil Rights Act of 1964.

DTSC receives federal funds from the U.S. EPA for several of its programs.

Ripeness

These claims are timely filed as required by 40 C.F.R .§7.120(b)(2). On April 7, 2005 DTSC announced its settlement with Romic for past violations. In May 2005, DTSC issued a notice for the beginning of a public comment period for the Draft EIR, commencing May 31, 2005.

Demographics of East Palo Alto:

A city of 2.5 square miles, East Palo Alto, population of approximately 29, 500, "is a low-income community in California that is host to many environmentally compromised facilities used to support the high technology industry of Silicon Valley. The per capita income of this mostly minority community is one-third that of the county. The poverty and unemployment rates are 16.2 and nine percent, respectively, and 71 percent of adults over 25 did not graduate from high school" (US EPA Brownfields 2005 Grant Fact Sheet, East Palo Alto).

Over 90% of East Palo Alto residents are people of color and almost 65% of the population speaks a language other than English at home. Spanish is the most prevalent language other than English with over 50% speaking Spanish at home. (Census 2000 Data)

Background on the Romic Facility:

Romic is a commercial hazardous waste "recycling" facility located at 2081 Bay Road, East Palo Alto, California 94303-1316. The Romic facility spans 14 acres, is located about 1/4 mile west of the San Francisco Bay and is bordered to the north and east by a tidal marsh.

Residents live only about 2,000 feet to the west, and two elementary schools sit about one mile to the east, and one mile to the southwest. A 32-bed drug and alcohol facility is approximately 1/4 mile southeast of the facility. The Ravenswood Preserve is to the east and provides recreational opportunities for cyclists, hikers and bird watchers.

Residents are also subjected to industrial activity and potential cumulative risk from a nearby PG&E substation, auto dismantling yards and a closed facility formerly owned by Catalytica Corporation. Cumulative impacts on residents from Romic and these other industrial activities were never comprehensively evaluated by DTSC or any other agency.

According to the DTSC's May 2005 Fact Sheet, "Romic mostly receives waste from industrial businesses. Examples of waste Romic accepts include paint thinner, antifreeze, discarded paints and oils, inks, and adhesives. Romic treats waste using different methods. One method, called distillation, uses heat to separate components in a chemical mixture according to their different boiling points...Another treatment method combines similar wastes that have high energy content to be used as substitute fuel....Romic needs a hazardous waste permit to store waste or use these and other waste treatment methods."

Permit History Background:

Romic began their East Palo Alto operations in 1963. Romic operated on interim permit status from approximately 1981 until 1986.

In 1986 Romic received a five-year permit from DTSC with an expiration date of 1991, yet DTSC has allowed them to operate on that same expired permit for the last 14 years. Despite the fact that Romic accepts, treats, stores and emits highly hazardous wastes, DTSC issued a draft permit to Romic in 1993, based on a Negative Declaration and without having done an Environmental Impact Report (EIR).

Based on public comments from residents outraged about the Negative Declaration, the DTSC decided in 1994 to begin an EIR process. In September 1995 the DTSC held a scoping meeting on the Draft EIR (DEIR). In June 2005 DTSC released the Draft EIR. Unacceptably and without legitimate reason, DTSC has taken 11 years since they agreed to perform an EIR to release the DEIR.

Although Romic submitted a permit renewal application in 1991, and DTSC deemed Romic's permit application complete in 1993 (DTSC Public Participation Plan), DTSC has since failed to take final action on that permit application for fourteen years. Given DTSC's pattern of failing to properly regulate and enforce its own permitting processes, it is expected that a permit decision will take many more years.

Romic Enforcement History:

On April 7, 2005, DTSC and the State Attorney General Officer announced an $849,500 settlement with Romic to resolve hazardous waste violations at Romic's East Palo Alto and Redwood City facilities. These violations occurred from 1999 to 2004.

The settlement includes major violations, according to DTSC. Among them are storing hazardous wastes in unauthorized containers, treating hazardous wastes in unauthorized units, modifying equipment without prior DTSC authorization and violating "current" permit conditions.

Violations that were part of the April 2005 settlement are only the most recent in a long history of violations which includes an estimated 300-450 gallon release of alpha picoline waste with 200-300 gallons spilling onto concrete surface and 100-150 gallons escaping into the atmosphere, and fires in 1984, 1986, 1989, 1991, 1993, and 1999. In 1995, Romic worker [redacted] was permanently brain-damaged for injuries he sustained at the Romic Rail Transfer facility. Romic was fined $106,000 by the California Occupational Safety and Health Administration and admitted to violations. In 1995, Romic also was found to release ferri-cyanide 28 times higher than allowable limits. Romic was given a Cease and Desist Order by the East Palo Alto Sanitary District.

Despite these serious violations, DTSC is still proposing to issue Romic a new permit and allow them to expand their East Palo Alto facility. For example, DTSC is proposing to allow Romic to increase their hazardous waste tank storage capacity by almost one quarter of a million gallons, container storage by 178,150 gallons and container storage for solids by an additional 252 cubic yards (DTSC May 2005 Fact Sheet).

Title VI of the Civil Rights Act: Claims Against DTSC:

Title VI of the Civil Rights Act of 1964 provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. 42 U.S.C. § 2000d.

DTSC, a recipient of federal financial assistance from the USEPA, has violated Title VI as implemented through EPA's regulations by repeatedly taking actions regarding the Romic hazardous waste facility in East Palo Alto, California that are having a discriminatory and disproportionate impact on the low-income residents and residents of color of our community.

USEPA must ensure that recipients of US EPA financial assistance are not subjecting people to discrimination. In particular, USEPA's Title VI regulations provide that an EPA aid recipient "shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex." 40 C.F.R. § 7.35(b).

The permitting and regulatory processes are DTSC's method of discriminatory actions that have disproportionate impacts. All complainants are required to show for our complaint is that when applied in a particular manner, DTSC's "method of administering its program" yields a discriminatory outcome. As the following sections demonstrate, DTSC's method of administering its permitting and regulatory program has resulted in discriminatory impacts on East Palo Alto residents.

The effect of DTSC's permitting process is clear: low-income residents and residents of color bear disproportionate impacts from Romic's operations and DTSC's failure to properly conduct legitimate permit and regulatory processes for the Romic facility.

(1) DTSC has improperly allowed Romic to operate in our community with an expired permit for 14 years:

Although Romic's permit from the DTSC expired in 1991, DTSC has improperly allowed the company to operate on this expired permit for 14 years. DTSC allowed Romic to operate on a "continuation of an expired permit" for longer than the life span of an actual permit of 10 years. During this time DTSC failed to proceed with necessary actions to see that the permit review was completed in a timely manner.

DTSC's inaction is improper and has a discriminatory impact on our community. Romic's permit application is for a huge expansion, not just a renewal, of their current operations. Secondly, there is absolutely no legitimate justification for DTSC taking 14 years to review a permit application. By taking such an extraordinary amount of time, DTSC has allowed Romic to continue operating without adequate public review and participation and without the environmental studies required under the California Environmental Quality Act.

Romic's serious violations addressed in the April 2005 settlement with DTSC are evidence of the dangers of allowing Romic to operate without proper permits or environmental review. If DTSC had subjected Romic to a proper and timely permit process, these violations might have been avoided, thus sparing the community the potential or actual harm from these serious violations.

(2) DTSC has already taken the unacceptably long period of 11 years to conduct a Draft Environmental Impact Report (DEIR) process:

There is simply no logical or reasonable justification for DTSC taking 11 years on a DEIR process for a facility that has a poor track record and transports, stores, treats and emits hazardous chemicals. By taking so long and allowing the company to operate without proper environmental review, our community has been put at risk. DTSC knew there was tremendous concern in the community about this facility's operations, knew the company handled and treated highly hazardous chemicals, and knew there were violations at the facility, yet DTSC moved at a snail's pace on processing the permit application and conducting the DEIR process.

On July 21, 1999, DTSC told YUCA that the draft EIR would be ready by September 1999, nearly six years ago.

After the September 1999 deadline passed, DTSC then stated that the DEIR would be ready for public review in March 2000. DTSC then extended that deadline to June 2000.

In June 2003, DTSC told YUCA that the Draft EIR would be released by June 1, 2004.

In August 2004, YUCA was told by DTSC that the DEIR would be released sometime by the end of September, 2004.

In December 2004, DTSC stated that the public review of the DEIR would occur in January 2005.

This inexcusable delay has had a disproportionate and discriminatory impact on low-income residents and residents of color of East Palo Alto.

(3) DTSC has failed to provide for meaningful notice and opportunities to comment on the Draft EIR by not translating the Draft EIR into Spanish:

DTSC is aware that many residents of East Palo Alto are monolingual Spanish-speakers. DTSC is knowingly and illegally excluding monolingual Spanish-speaking residents from participation in the permit process by failing to translate permit documents into Spanish. DTSC's failure to translate documents into the language that many residents speak – residents who are potentially impacted by Romic's hazardous operations – has a discriminatory and disproportionate impact on monolingual Spanish-speaking residents. This disparate impact on these low-income residents and residents of color is a violation of Title VI of the Civil Rights Act and the USEPA's implementing regulations.

(4) DTSC failed to notify residents about serious and numerous violations committed by Romic between 1999 and 2004 that potentially threatened the health and well-being of our community:

To the shock of residents, complainants and other residents learned from a reporter that DTSC and Romic had agreed to a settlement of $849,500 for Romic's past violations since 1999. DTSC clearly had the power to inform the community of Romic's violations and of DTSC's proposed enforcement. DTSC violated their agreement with YUCA to keep the community informed. Had the community been notified about these violations once they occurred, residents would have been able to decide for themselves what course of action to take, including possibly moving away from close proximity to the plant that had so many serious violations or taking other safety precautions.

In addition, money collected from the settlement is wrongfully being re-routed to cover Romic's insurance policy. This is absurd use of settlement monies and a favor to a company that has violated the law in serious and repeated ways. DTSC's agreement with Romic to fund an insurance policy to cover closure costs based on their proposed expansion *preapproves* their permit. If DTSC and Romic can't properly regulate the current size of its facility, then it is unacceptable and improper for DTSC to conclude that they can regulate an expanded facility or that Romic deserves a new permit. DTSC's actions clearly violate their mission to "protect and ensure public health, environmental quality...by regulating hazardous waste."

DTSC has the power to deny Romic's permit application due to such violations yet they continued to move forward to approve the application.

In 2003, DTSC agreed to have monthly meetings with Youth United for Community Action in East Palo Alto, on the development and progress of Romic's permit and Environmental Impact Report. This has not been happening.

Remedies

In order to provide effective remedies for the patterns of discrimination described in this complaint, the complainants request that US EPA:

1) require that, as a condition of continuing to provide federal financial assistance, DTSC immediately revoke Romic's permit and deny their pending permit application;

2) require that DTSC translate permit documents relating to the Romic facility into Spanish;

3) require that DTSC disclose to the public, on an ongoing basis, information about violations and Notices of Violations regarding Romic in a timely manner and in a manner designed to truly notify the community about such problems;

4) require DTSC to reallocate the Supplemental Environmental Project funds that are currently earmarked for Romic's insurance policy to instead be directed towards community environmental projects to be determined by the community;

5) require DTSC to inform the community about proposed decisions regarding violations and proposed enforcement actions on those violations *before* those decisions are made;

6) require DTSC to provide complainants with copies of all correspondence to or from the respondent throughout the course of USEPA's investigation, deliberation and disposition of this complaint;

7) require DTSC to use demographic data in considering permit applications;

8) require DTSC to consider cumulative impacts from adjacent industries and other pollution sources when making permit decisions;

9) terminate its assistance to DTSC, pursuant to 40 C.F.R. §7.25, if DTSC fails to implement the above requested changes and continues to violate the civil rights of East Palo Alto residents

Conclusion

Since the beginning of this process that started in 1991, the community of East Palo Alto has been waiting patiently for the completion of the EIR and results of the permit process. Fourteen years has been way too long. In these years, there have been many violations that new generations in our community have had to bear the brunt of. By your actions, it feels that DTSC has been protecting Romic and not our community. We are the ones who have been living with the effects of Romic's activities as well as DTSC's. Residents of East Palo Alto are disgusted with DTSC's failure to properly enforce and regulate the Romic facility.

As this complaint makes clear, the low-income people of color residents of East Palo Alto, California have had to live next to a poorly regulated commercial hazardous waste facility that has had a poor track record for decades. This facility has been improperly allowed to operate without proper studies or adequate public processes for decades. As a result, the low income residents and residents of color have been subjected to discriminatory and disproportionate impacts due to DTSC's actions, in violation of Title VI of the United States Civil Rights Act of 1964 and US EPA regulations. Because DTSC receives federal funding from EPA, it is subject to Title VI as implemented by EPA regulations. This complaint is timely filed since DTSC took agency action regarding Romic in April and May, 2005, less than 180 days ago.

Please direct correspondence to the individuals at the following address:

Annie Loya
Youth United for Community Action
[redacted]

Peter Evans
[redacted]

Luke Cole, Esq.
Center on Race, Poverty and the Environment
450 Geary Street, Suite 500
San Francisco, CA 94102

Bradley Angel
Greenaction for Health and Environmental Justice
One Hallidie Plaza, Suite 760

San Francisco, CA 94102

We look forward to a thorough investigation and resolution of our complaint and protection of our civil rights.

Sincerely,

Peter Evans
Ujima Security Council

Annie Loya
Higher Learning Coordinator
Youth United for Community Action

Cynthia Cruz
Organizing Intern
Youth United for Community Action

Rosie Solorzano
Organizing Intern
Youth United for Community Action

LilyMae Martin
Member
Youth United for Community Action

Cc:
City Council of East Palo Alto
Assembly Member Ira Ruskin
Assembly Member Joe Simitan
Evelia Rodriguez, Department of Toxic Substances Control
Kimberly Rhodes, Department of Toxic Substances Control, Environmental Justice Coordinator
Joe Lyou, California Environmental Protection Agency Advisory
Diane Takvorian, California Environmental Protection Agency Advisory

Attachments:

- Public Participation Plan drafted by the Department of Toxic Substances Control indicating date when Romic's application issued "Notice of Completeness" by state DTSC (6/22/93)
- Agreement reached on 6/4/2003 between members of Youth United for Community Action (YUCA) and state DTSC indicating that DTSC will meet with YUCA monthly
- Email from Nathan Schumacher dated 9/16/2004 indicating 4 areas of analysis that the state DTSC will be dropping from the Environmental Impact Report
- Email from Nathan Schumacher dated 8/27/2004 indicating when DTSC would release Romic's draft EIR and permit
- State DTSC press release dated 4/7/2005 regarding $849,500 settlement reached with Romic
- Letter from YUCA to DTSC dated 4/16/2005 regarding Romic's settlement
- Press Release from YUCA dated 4/27/2005 regarding Romic's settlement

California Environmental Protection Agency
Department of Toxic Substances Control

PUBLIC PARTICIPATION PLAN
ROMIC ENVIRONMENTAL TECHNOLOGIES CORPORATION

2081 Bay Road
East Palo Alto, California 94303

November 2002

Approved: Lora Barrett
Lora Barrett
Public Participation Specialist
Department of Toxic Substances Control

Date: 11/13/02

Date	Activitiy
6/16/93	Romic submitted revised Part B Application
6/22/93	DTSC issued a Notice of Completeness for Romic's Part B application dated May 1993.
6/25/93	Public notice issued in the San Jose Mercury newspaper regarding draft permit and proposed negative declaration.
7/27/93	Public notice issued in the San Jose Mercury newspaper regarding postponing the public hearing.
3/4/94	DTSC initiated a discussion with the City of East Palo Alto regarding which agency would be the lead for the Environmental Impact Report.
8/10/94	DTSC responded to East Palo Alto Sanitary District's request to be lead for the EIR. DTSC explains why it should remain as the lead.
3/1/95	DTSC sent a letter to Romic regarding cost recovery for the EIR, which includes contract and cost estimation.
8/4/95	Memorandum of Understanding for the EIR signed by DTSC and Romic.
10/21/95	EIR scoping meeting held. Public notices and fact sheets on this meeting distributed September 29th.
11/8/95	Public notice sent out extending the public comment period for the EIR scoping.
6/15/97	DTSC sendt out fact sheet on the EIR and permit.
6/16-7/2/97	Bids sent out for contractors to prepare EIR and Health Risk Assessment.
9/2/97	Public Participation Plan is available.
5/20/98	Consultant selected for EIR.
12/1/98	DTSC issued fact sheet on the status of the EIR and permit.
12/1/98	DTSC and Romic signed Enforcement Consent Agreement.
2/3/99	DTSC approved the Human Health Risk Assessment and Ecological Risk Assessment Workplan dated January 6, 1999.

Romic has until July 3rd to submit the HRA

DTSC will recommend when permitting ~~violations~~ deadlines are missed, the maximum allowable penalties

DTSC will inform YUCA of the timeline schedule for permit renewal. We will give an explanation of upcoming dealines that are being set. Reasons for changes in deadlines will be given to YUCA.

June 19th and ~~the~~ each month DTSC ~~will meet with YUCA to provide as~~ much detailed info as we can provide as early as possible

YUCA June 4, 2003 DTSC

x Sergio Gonzalez
Cindy M Martinez
DAVID CRUZ
[illegible]
Le Tuong

[illegible]
Lora Barnett PPS
[illegible]

Wed
Mercedes 4-
Erica 4- } 3 [illegible]
Nat

Thu
Mercedes
[illegible]
[illegible]

Envelope-to: annie@youthunited.net
Date: Thu, 16 Sep 2004 14:48:37 -0700
From: "Nathan Schumacher" <NSchumac@dtsc.ca.gov>
To: <annie@youthunited.net>,<charisse@youthunited.net>
Cc: "Evelia Rodriguez" <ERodrigu@dtsc.ca.gov>
Subject: Fwd: Re: EIR Process

Dear Annie and Charisse,

Congratulations on your victory in court.

I have since learned that DTSC made a decision soon after the EIR scoping meeting to drop doing analysis of impacts to the following: agricultural and mineral resources, population and housing as well as recreation.

We decided to drop these areas because our own thinking told us that Romic would not have an impact on them. We found our thinking supported by input from other agencies and input from the community. As a result, our proposed Environmental Impact Report will not have any analysis in these areas.

Any other questions, please feel free to call or e-mail. All the best, Nathan
>>> Nathan Schumacher 09/15/2004 10:19:36 AM >>>
Dear Annie and Charisse,

Sorry I have not gotten back to you sooner. People can submit comments in a number of ways: email, U.S. mail, fax or orally at the public hearing that we will hold in East Palo Alto.

The Draft Permit and Proposed EIR are still not ready to go. However, I can say that the document will cover the following kinds of environmental impacts:

1. Aesthetics - things like visual character, light glare, damage to scenic resources (like trees or scenic vistas)

2. Agricultural resources - things like agricultural zoning, conversion of farm land to a non-farm use

3. Air quality - things like violations of air quality standards, result in an increase of air pollutants, create objectionable odors

4. Biological resources - modify animal habitats, affect sensitive natural communities, affect protected wetlands, further threaten an endangered species

5. Cultural resources - disturb buried human remains, destroy recognized historical sites, destroy or disturb any archeological site present

6. Geology and Soils - create more exposure to landslides, earthquakes, lead to more soil erosion, lead to loss of top soil

7. Hazards and Hazardous materials -- emit hazardous emissions, impair the adopted emergency response plan for the area, create a significant hazard to the public through foreseenable accidents or upsets involving releases of hazardous materials to the environment

8. Hydrology and Water Quality - violate waste discharge requirements, alter existing drainage patterns, create large amounts of runoff water

Envelope-to: Annie@youthunited.net
Date: Fri, 27 Aug 2004 08:43:49 -0700
From: "Nathan Schumacher" <NSchumac@dtsc.ca.gov>
To: <charisse@youthunited.net>
Cc: <Annie@youthunited.net>,<Le@youthunited.net>,
<Sergio@youthunited.net>
Subject: Re: Romic's EIR Completion Timeline

Hello,

As of now, we (the Department of Toxic Substances Control) still plan to release both the draft permit and the proposed EIR for Romic about the end of September. However, there is some internal review going on that could take longer than the end of September. I will keep you and others with YUCA informed about any changes in our schedule. Please let Jason Bennett know of this as he called recently to check on the status.

Thank you,

Nathan Schumacher
DTSC
8800 Cal Center Drive
Sacramento CA 95826
(916) 255-3650

>>> <charisse@youthunited.net> 08/26/2004 3:28:05 PM >>>
Hi Nathan,
My name is Charisse and I am with YUCA in East Palo Alto. I called and left a
message with you but wanted to email as well. I'm writing to request Romic's
most current EIR Completion timeline. Last we heard, it was end of September.
If you can get back to me as soon as you can on this, that would be great. You
can fax it to 650-322-1820, email me with it (charisse@youthunited.net) or mail
it to YUCA, 1848 Bay Road, East Palo Alto, CA 94303.
Thank you very much.
Charisse Domingo

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

NEWS RELEASE

Department of Toxic Substances Control

T - 18 - 05
For Immediate Release
April 7, 2005

Contact: Angela Blanchette
510.540.3732
Ron Baker
916.324.3142

$849,500 Settlement Reached with Romic Environmental Technologies

Berkeley --- The California Department of Toxic Substances Control (DTSC) and State Attorney General's Officer today announced an $849,500 settlement with Romic Environmental Technologies Corporation (Romic) which resolves hazardous waste violations that occurred at two Romic facilities located at 2081 Bay Road in East Palo Alto and at 695 Seaport Boulevard in Redwood City.

"We are pleased with the settlement," said DTSC Director B.B. Blevins. "It provides a stiff penalty for violations revealed during DTSC inspections and establishes detailed procedures for the safe future management of hazardous waste."

A copy of the Civil Complaint and Stipulation for Judgment (Judgment), approved by the San Mateo County Superior Court, as well as the Administrative Consent Order (Order), which resolves three remaining DTSC compliance issues, are available on DTSC's Web site at http://www.dtsc.ca.gov/HazardousWaste/Romic/Romic_ENF_CO.pdf .

The Order specifically requires Romic, at its East Palo Alto facility, to follow certain procedures to resolve the following compliance issues: storage of various waste types in the drum sampling area, intra-plant transfer via tanker truck to authorized storage/treatment tanks onsite, and liquefaction system changes. The procedures are outlined in detailed attachments to the Order.

Romic, owned by a subsidiary of ERP Environmental Services, Inc., has been in operation in East Palo Alto since 1963. The company stores, treats, and recycles hazardous wastes at the East Palo Alto facility including: paint thinner, antifreeze, discarded paints and oils, inks, adhesives, and a variety of solvents. In addition, Romic has operated a rail car transfer and storage facility in Redwood City since 1991 that is used to transfer waste to and from its East Palo Alto facility.

Under terms of the settlement, Romic will pay a total of $849,500, of which $526,700 is penalties, $122,800 is reimbursement of DTSC's administrative costs, and $200,000 will be used to fund Supplemental Environmental Projects (SEPs). Romic will use $150,000 of the SEP dollars to fund an insurance policy for $5.4 million to cover future closure costs for the East Palo Alto facility. This represents an increase of almost $4million dollars in coverage over the previous closure cost estimate of $1,568,155.00.

The settlement ensures adequate funding for the Romic facility's closure should the facility stop operating prior to DTSC's decision on Romic's pending hazardous waste permit renewal application, which will undergo public review and comment later in 2005. Without this settlement Romic would not be obligated to fund the increased closure cost estimate until a final decision is made on the facility permit.

- - - MORE - - -

The remaining $50,000 in SEP dollars will be used for the State Environmental Enforcement and Training Account, which provides a supplemental source of funding for California environmental enforcement and training programs for public prosecutors, peace officers, firefighters, and environmental regulators.

The settlement stems from violations found by DTSC inspectors at the East Palo Alto and Redwood City facilities between 1999 and 2004. Romic operates 50 permitted hazardous waste storage tanks, 55 permitted treatment units, four permitted drum storage buildings, and a regulated drum sampling area on its 14-acre East Palo Alto facility. At the East Palo Alto facility the violations DTSC found included:

- Combining incompatible hazardous wastes resulting in two separate small bin fires in December 1999;
- Storing hazardous waste in unauthorized containers in unauthorized areas in 1999, 2001, 2002, 2003, and 2004;
- Storing incompatible hazardous wastes without separation in 2001 and 2003;
- Treating hazardous waste in unauthorized units in 2001, 2002, and 2003;
- Exceeding capacity of hazardous waste tanks in 1999, 2000, and 2001;
- Modifying facility equipment without prior authorization from DTSC; and
- Failing to comply with DTSC's permit conditions

All violations listed above have been corrected.

At the Redwood City rail transfer facility the violations included:

- Failing to maintain a financial assurance mechanism to cover the cost of possible closure of the facility in 2002;
- Failing to comply with conditions of the rail transfer facility's standardized permit in 2002 and 2004;
- Failing to maintain a secondary containment unit at the rail transfer facility in 2004; and
- Failing to conduct regular inspections at the rail transfer facility's secondary containment unit in 2004

Romic has corrected all violations that occurred at the rail transfer facility in 2002. By entering into the Stipulation and Judgment, Romic has agreed to a schedule of compliance to correct the violations that occurred in 2004.

DTSC issued Romic a California Hazardous Waste Facility Permit in May 1986 to store and treat hazardous waste at its East Palo Alto facility. The company originally operated its rail transfer and storage facility at the Port of Redwood City under a variance from permitting requirements which DTSC granted in April 1991. In January 2002, Romic's rail transfer and storage facility became a DTSC permitted facility.

###

The Department of Toxic Substances Control's mission is to restore, protect, and enhance the environment and ensure public health, environmental quality and economic vitality by regulating hazardous waste, conducting and overseeing cleanups, and developing and promoting pollution prevention.

Youth United for Community Action
a project of the Tides Center

YOUTH PROJECT BOARD

Cari Pang Chen
Chair

Ross Cunningham

Melvin Gaines

Vanessa Nisperos

Ali Rahnoma

Anna Turner
Staff Representative

Shana White

Jessica Woods

ADVISORY BOARD

Sundiata Acoli
Afrikan Cultural Society

Nadinne Cruz

Keisha Evans
Ujima Security Council

Makini Hassan
Malcolm X Grassroots Movement

Jitu Sadiki
Black Awareness Community Development Organization

PROJECT DIRECTOR

Oscar Flores

April 16, 2005

Mohinder Sandhu
Department of Toxic Substances Control
700 Heinz Avenue Suite 200
Berkeley, CA 94710-2721

Nathan Schumacher
Department of Toxic Substances Control
1001 I Street
Sacramento, CA 95814-2828

Mr. Sandhu and Mr. Schumacher,

We are writing this letter on behalf of the East Palo Alto community. In 2003, DTSC agreed to have monthly meetings with Youth United for Community Action in East Palo Alto, on the development and progress of Romic's permit and Environmental Impact Report. This has not been happening.

To our shock, we learned from a reporter that DTSC and Romic had agreed to a settlement of $849,500 for Romic's past violations since 1999. We were angry that the community was not informed of this by your agency. While we are aware that settlement negotiations could not be disclosed, you had the power to inform the community of Romic's violations, your proposed enforcement, and that you were considering this course of action. You violated our agreement, and more so, the integrity of our community.

What's more, money collected from the settlement is being re-routed to cover Romic's insurance policy. This is absurd! Your agreement with Romic to fund an insurance policy to cover closure costs based on their proposed expansion *preapproves* their permit. If DTSC and Romic can't properly regulate the current size of its facility, then what makes you think that you and they can regulate an expanded one? This does not uphold to your mission to "protect and ensure public health, environmental quality...by regulating hazardous waste."

Since the beginning of this process that started in 1991, the community of East Palo Alto has been waiting patiently and has been listening to all the reasons you have given us for the EIR and permit delay. Fourteen years has been way too long. In these years, there have been many violations that new generations in our community have had to bear the brunt of. This fuels disgust against DTSC from East Palo Alto. By your actions, it feels that you have been protecting Romic and not our community. We are the ones who have been living with the effects of Romic's irresponsibility as well as DTSC's.

1848 Bay Road, East Palo Alto, CA 94303 • Phone (650) 322-9165
• Fax (650) 322-1820 • Email Address -info@youthunited.net • Website: www.youthunited.net

We have already contacted you to set up a meeting to discuss this matter, and it would be in DTSC's best interest that you meet with us. We request that DTSC reevaluate and reconsider the Supplemental Environmental Project funds that is currently earmarked for Romic's insurance policy and directed towards community environmental projects to be determined by the community. You also must inform the community in your decisions regarding violations and proposed enforcement actions on those violations *before* those decisions are made. We also believe it is in the community's health and well-being that DTSC deny Romic's permit.

If you need more information, you can give us a call at (650)322-9165.

With regards,

Cynthia Cruz
Youth Organizer
Youth United for Community Action

Annie Loya
Higher Learning Assistant Coordinator
Youth United for Community Action

Charisse Domingo
Associate Director
Youth United for Community Action

CC:
City Council Member Pete Evans, City of East Palo Alto
City Council Member Donna Rutherford, City of East Palo Alto
City Council Member Patricia Foster, City of East Palo Alto
City Council Member David Woods, City of East Palo Alto
City Council Member Ruben Abrica, City of East Palo Alto
Assembly Member Ira Ruskin, 21st Assembly District
State Senator Joe Simitian, District 11
Evelia Rodriguez, Department of Toxic Substances Control
Kimberly Rhodes, Department of Toxic Substances Control
Joe Lyou, California Environmental Protection Agency (Cal/EPA) Advisory Committee on Environmental Justice (CEJAC)
Diane Takvorian, California Environmental Protection Agency (Cal/EPA) Advisory Committee on Environmental Justice (CEJAC)

For immediate release: April 27, 2005
Press contact: Rosa Solorzano (650) 322-9165

Who Got $850, 000?

East Palo Alto youth and residents to protest Department of Toxic Substance Control

East Palo Alto, California – On Tuesday, May 3, 2005, Youth United for Community Action, a group of young community organizers between the ages of 13 and 19, is hosting a rally to protest DTSC's consistent (Department of Toxic Substance Control) delay of Romic Environmental Technologies (a toxic waste recycling facility in East Palo Alto) Environmental Impact Report (EIR), Draft Permit and recent settlement with Romic. The **rally will be held at DTSC's headquarters' in Berkeley at 700 Heinz Avenue, Berkeley, CA 94710, from 3:50 – 5:30PM**

On April 7, 2005, settled with Romic for violations dating back to 1999. in the amount of $849, 500. Violations include stacking leaning drums; mixing incompatible hazardous waste resulting in a fire in 1999; placing unauthorized wastes in unauthorized areas; treating wastes in unauthorized areas; storing incompatible waste with out separation in 2001 and 2003; exceeding capacity of hazardous waste tanks in 1999, 2000, and 2001; and violating "current" permit conditions set by DTSC. Collected money will be allocated in areas such as $122,800 to DTSC Administrative costs, $200, 000 towards Supplemental Environmental Funds; $150, 000 of which is going towards Romic's insurance policy for $5.4 million set to cover closure costs.

East Palo Alto community members are angry with DTSC and felt it necessary to hold this Rally because:

1.) DTSC failed to inform any community member on this settlement when they had the power to do so before a final decision was made.
2.) None of the settlement money is coming to East Palo Alto, when it is our community that suffers from Romic's and DTSC's mistakes
3.) Despite Romic's violations, DTSC allowed Romic to continue operating
4.) 10 years to produce an EIR and 14 years to operate off an expired permit is way too long. Thus, we believe DTSC should not approve Romic's permit application.

East Palo Alto will be heard!!!
If you have any questions, please feel free to call (650) 322-9165