



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 9

75 Hawthorne Street
San Francisco, CA 94105-3901

April 16, 2012

MEMORANDUM

SUBJECT: EPA Endangered Species Act Determinations for US Ecology Beatty, Nevada Facility TSCA Approval Renewal Application

FROM: John Beach
Environmental Scientist

TO: The Record

This memorandum presents EPA Region 9's determinations under Section 7 of the Endangered Species Act (ESA), 16 U.S.C. Section 1536, with respect to U.S. Ecology's application for renewal and modification of its Toxic Substances Control Act (TSCA) Approval for its Beatty, Nevada facility. EPA has completed its analysis in accordance with Section 7 and the implementing regulations at 50 C.F.R. Part 402, using the best scientific and commercial data available.

I. Background

EPA is evaluating U.S. Ecology's January 2010 application for renewal and modification of the TSCA Polychlorinated Biphenyl (PCB) Approval for the subject facility. EPA's contemplated action addressed by this determination is the issuance of that requested approval. As described in the January 2010 application, the facility is used to store, handle and dispose of PCB transformers and other PCB-containing items and to store and handle PCB liquids.

II. Review of Best Scientific and Commercial Data Available to Assess Potential Effects on Listed Species

At EPA's request, U.S. Ecology prepared a Biological Evaluation dated February 28, 2012 to provide EPA with information necessary to assist the agency in satisfying its obligations under Section 7 of the ESA. Also at EPA's request, the facility prepared a Soil Sampling Report dated September 12, 2011 and, based on the results of the sampling, completed an Ecological Risk Assessment (dated February 28, 2012) that evaluated the potential impacts of facility operations on the environment, including endangered species. I have also visited the facility, inspected the surrounding area,

and observed a portion of the Endangered Species Field Survey performed in August, 2009 and documented in a final report dated September 28, 2009.

The Biological Evaluation included:

- A description of current and proposed future facility conditions and operations.
- Correspondence with the US Fish and Wildlife Service, including current lists of species that have been listed as Threatened and Endangered Species under the ESA and their designated critical habitat,
- A report documenting the results of a field survey of the area surrounding the facility to identify any listed species that might occur in the area.
- A review of the the Ecological Risk Assessment to identify any potential impacts to threatened or endangered species.
- A review of available information and literature on potential listed species and designated critical habitat in the area, including the desert tortoise (a threatened species).
- An analysis of the potential effects of the proposed action on listed species and designated critical habitat.
- A list of all references.

I have reviewed the Biological Evaluation, Soil Sampling Report, Endangered Species Field Survey, and Ecological Risk Assessment (including all attachments) and have recommended that EPA accept the final versions of all four documents. I have also reviewed the 2008 USFWS draft revised recovery plan for the desert tortoise as it pertains to the proposed action and potential effects on listed species and designated critical habitat.

III. Conclusions

Based on my review of the Biological Evaluation, Soil Sampling Report, Endangered Species Field Survey, Ecological Risk Assessment and other available information, I have concluded that:

- No listed species, including the desert tortoise, or designated critical habitat are currently present at or near the facility.
- No sign of the desert tortoise has been observed in the area.
- The PCBs that have been detected in soils near the facility are not present at concentrations that might harm any listed species, should they be present near the facility.
- Ongoing facility operations, including those proposed for the TSCA approval, will not result in any changes to habitat at or near the facility, including PCB concentrations in off-site soils

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Accordingly, I have determined that the proposed facility operations under the TSCA PCB approval will have no effect on listed species or designated critical habitat.

With this determination, EPA has fulfilled its obligation under Section 7 of the ESA and 50 C.F.R. Section 402.14(a) pertinent to the action considered and, accordingly, does not need to consult with the US Fish and Wildlife Service .