



May 1, 2025

Via E-Mail

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Re: Chiquita Canyon Landfill Response to April 1, 2025 Summary of Violations

Dear Ms. Neal and Ms. Zmily:

Chiquita Canyon, LLC (“Chiquita”) is in receipt of the Summary of Violations (“SOV”) for the Chiquita Canyon Landfill (“Landfill”) issued by the Department of Toxic Substances Control (“DTSC”) on April 1, 2025.¹ Based on the allegations set forth in the SOV, DTSC requested that Chiquita take certain actions and provide certain information within thirty (30) days of the SOV. Other actions and requests for information did not include an explicit deadline. Reserving all its rights and defenses, Chiquita provided interim responses to a portion of SOV Allegation #2A, copies of which are attached hereto as **Attachment 1**, and to a portion of SOV Allegation #2B, copies of which are attached hereto as **Attachment 2**.

As discussed below, Chiquita disputes the allegations set forth in the SOV and requested actions. Chiquita has provided voluminous and timely information about the Landfill to its regulators and continues to do so. Chiquita will continue to cooperate with reasonable requests for information that are within the scope of DTSC’s authority and applicable to the Landfill. However, none of

¹ Chiquita Canyon, LLC is the sole owner, operator, and permit holder at Chiquita Canyon Landfill. Chiquita Canyon, Inc. and Waste Connections US, Inc. are not part of the facility name, nor do they manage, direct, or conduct operations at the facility as alleged in the SOV.

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the SOV's alleged violations and requested corrective actions are supported by the factual circumstances or the regulatory citations.

Chiquita nevertheless provides the following information in the interest of continued cooperation with its regulators. The information, documents, and attachments provided herein should not be construed as an admission of any factual allegation or legal conclusion in the SOV or an admission of any liability for any matter described in the SOV.

Allegation #1 – Failure to Comply with Land Disposal Restriction Requirements

Summary of DTSC Allegation:

DTSC alleges that Chiquita violated 22 CCR § 66262.17(a)(9) by failing to comply with land disposal restriction (“LDR”) requirements with respect to shipments on November 10 and 11, 2024, of three loads of leachate from one of Chiquita’s leachate tanks to Red Rock Landfill, located in Arizona, for disposal. In support of this allegation, DTSC asserts that Chiquita sampled Tank #172, but the leachate loads at issue were solidified and disposed of at Red Rock Landfill prior to Chiquita receiving test results. DTSC further alleges that on November 12, 2024, sample results from Tank #172 showed a methyl ethyl ketone (“MEK”) concentration of 39 mg/L, in exceedance of the nonwastewater Universal Treatment Standard (“UTS”) for MEK of 36 mg/kg. DTSC also alleges that on November 27, 2024, Chiquita sent a notification letter to Red Rock Landfill acknowledging these shipments exceeded the applicable LDR treatment standard for MEK.

Chiquita Response to Allegation:

Chiquita denies that it violated 22 CCR § 66262.17(a)(9) for several reasons.

First, the cited provision does not currently apply to Chiquita (and did not apply at the time of shipments during November 2024). Section 66262.17 sets forth a conditional exemption from permitting requirements for accumulation of hazardous wastes by Large Quantity Generators (“LQGs”). Subsection (a)(9) sets forth one of the “Conditions for [the] Exemption,” namely compliance with LDR requirements. However, Chiquita does not currently (and did not in November 2024) need the conditional exemption in Section 66262.17, because it is (and was) exempt from permitting under an entirely different provision, the Immediate Response Exemption of 22 CCR § 66270.1(a)(3)(A). Chiquita has previously explained² how it has

² Previous explanations of the applicability of the Immediate Response Exemption include, but are not limited to, Chiquita’s correspondence to DTSC dated February 14, 2024. See [Attachment 3](#) for this correspondence. As explained in this correspondence, Chiquita was and is experiencing an Elevated Temperature Landfill (“ETLF”) event necessitating an immediate response, including treatment and containment of the on-site leachate. When operating under the Immediate Response Exemption, hazardous waste permitting requirements do not apply due to the emergency situation at hand.

An ETLF event, also referred to as a landfill reaction, is typically characterized by rapid increases in both landfill gas and leachate quantities, which can overwhelm traditionally permitted existing gas and liquids infrastructure.

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qualified for the Immediate Response Exemption and incorporates those explanations here by reference. Chiquita is not, in “violation” of a condition for an exemption that it did not need nor had it sought. (*See, e.g.*, 81 Fed. Reg. 85,732, 85,746 (Nov. 28, 2016) (“Generator Improvements Rule”) [“Meeting a condition for exemption is required only if the generator wants an exemption, and then is ‘required’ only in the sense that it is a necessary step to take in order to successfully obtain that optional exemption”]).

Second, Chiquita maintains that it complied with all numeric LDR requirements for the three loads of treated leachate that are the subject of Allegation #1. The facility properly determined that the treated leachate was non-hazardous,³ and thus could be shipped to a non-hazardous waste landfill, such as the Red Rock Landfill, for treatment and disposal. Chiquita was not required to notify the receiving facility of any underlying hazardous constituents that might have been above Universal Treatment Standards (“UTS”). (*See, e.g.*, 58 Fed. Reg. 48,092, 49,135 (September 14, 1993) [“there is no current requirement that the generator notify a Subtitle D nonhazardous waste treater of the constituents subject to treatment in the waste”]; RCRA Hotline Report (November 2001) (RCRA Online #14585) [“the generator is not required to notify the Subtitle D facility of the constituents subject to treatment”]).

In any event, the Red Rock Landfill facility reportedly solidified the liquid leachate at issue in a tank before land disposing of the waste. (*See, e.g.*, 40 C.F.R. § 258.28(a) [generally prohibiting disposal of bulk or noncontainerized liquids in municipal solid waste landfill]). Such solidification would have reduced the concentration of MEK in the leachate by more than 10%, which is all that would have been necessary to reduce the measured concentration from 39 mg/L to the UTS of 36 mg/kg. The material that was ultimately land disposed (*i.e.*, solidified leachate) therefore met applicable numeric treatment standards. While the Red Rock Landfill does not appear to have verified through testing that the treatment standards were met, it was not required to do so. (*See, e.g.*, 58 Fed. Reg. at 49,135 [“there is no current requirement...for the subtitle D treater to verify compliance with the treatment standards”]; RCRA Online #14585 [“Subtitle D treaters (*i.e.*, treaters of wastes which are no longer hazardous but which require treatment to satisfy LDR treatment standards) are not currently required to verify compliance with treatment standards”]).

Unique changes in the composition of both landfill gas and leachate can also result from an ETLF event. Chiquita has responded to the ETLF event occurring at the Landfill, in consultation with and under the supervision of its regulators, with rapid and robust expansion of its gas and liquids infrastructure.

³ One of Chiquita’s leachate tanks, labeled ECT Tank #172 (“Tank 172”), was sampled on November 2, 2024, and the test results came back on November 4, 2024 showing that the leachate was non-hazardous and met Land Disposal Restriction (“LDR”) treatment standards. The contents of this tank were subsequently approved for shipment, and one load on November 6, 2024 and one load on November 7, 2024 were sent to Red Rock Landfill.

Between November 8th and 9th, the now partially-empty Tank 172 was refilled with new leachate. An additional confirmation grab sample was taken on the afternoon of November 9th. On November 10th, two loads were pulled from Tank 172 and sent to Red Rock. Early on November 11th, another load was pulled and sent to Red Rock. On November 12th, the test results from November 9th sample were returned, showing one constituent slightly above the applicable LDR treatment standard (MEK concentration of 39 mg/L), thus indicating that the three loads sent to Red Rock on November 10th and 11th were non-conforming because they were slightly above the relevant non-wastewater standard of 36 mg/kg MEK for LDRs. The leachate was originally hazardous due to benzene, but had been treated to remove that characteristic.

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Chiquita verbally informed the Red Rock Landfill on November 15, 2024, about the slightly elevated MEK test result for the treated leachate at issue. As noted in the SOV, Chiquita also sent a follow-up letter to the landfill facility on November 27, 2024, which provided additional background and information about steps the company was taking to prevent similar incidents in the future. However, such communications in no way constituted an admission of any regulatory violations. As the United States Environmental Protection Agency (“EPA”) noted when it originally established the LDR requirements for characteristic hazardous wastes, “generators and Subtitle D facilities have substantial incentives (such as CERCLA liability) to exchange information and verify compliance with treatment standards for underlying hazardous constituents *independent of federal notification requirements.*” (59 Fed. Reg. 47,980, 48,016 (September 19, 1994) (emphasis added)). Consistent with this, Chiquita conservatively sought to limit liabilities by shipping only leachate that had been measured to have MEK concentrations below the UTS to Red Rock Landfill. The fact that the loads at issue in Allegation #1 did not meet the company’s goal did not mean that any regulatory violation occurred.

Summary of DTSC Prescribed Actions:

DTSC directs Chiquita to comply with all applicable requirements for LDRs. The SOV states that Chiquita must provide the lab results for all samples collected from Tank #172 on November 2 and 9, 2024. It further directs Chiquita to provide a written description of the “Tank Release” program and a copy of the Standard Operating Guideline referenced in Chiquita’s November 27, 2024 notification letter to Red Rock Landfill.

Chiquita Response to DTSC Prescribed Actions:

The actions prescribed by DTSC with respect to Allegation #1 are without foundation, given that the allegation is without merit, as discussed above. Chiquita will nevertheless continue to comply with applicable requirements and is providing the requested information in the interest of cooperation and transparency.

Following this incident, Chiquita instituted a Tank Release program, which locks the valves on the influent and effluent ends of the tanks according to their stage in the filling, sampling, approval, and disposal process to ensure that once a tank is filled and a sample has been taken, more liquids cannot be added to that tank until that tank has been emptied. During the filling process, the influent valve is opened while the effluent valve remains locked. Once the tank is full and the liquids have been sampled, the influent valve is locked so that liquids can neither enter nor leave the tank. Upon receipt of the sample’s analytical results and approval from the disposal facility, the effluent valve is unlocked to allow for loading into trucks. During this loading process, the influent valve remains locked. Once the tank is fully emptied, the effluent valve is locked and the influent valve is unlocked so that the tank is ready to receive liquids again. This process also ensures that only Chiquita employees can control when a tank is filled or emptied.

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Lab results for all samples collected from Tank #172 on November 2 and 9, 2024 are attached as **Attachment 4**. A copy of the Standard Operating Guidelines referenced in Chiquita's November 27, 2024 notification letter to Red Rock Landfill is attached as **Attachment 5**.

In sum, Chiquita did not violate 22 CCR § 66262.17(a)(9). Chiquita complied with all numeric LDR requirements for the three loads of treated leachate, and the Red Rock Landfill facility appropriately handled the leachate before disposing of it. Chiquita additionally worked cooperatively and transparently with the Red Rock Landfill facility to ensure that the leachate at issue was handled and disposed of properly. DTSC's Allegation #1 is without merit.

Allegation #2A – Failure to Minimize the Possibility of a Release of Hazardous Waste

Summary of DTSC Allegation:

DTSC asserts that Chiquita violated 22 CCR § 66262.251 by allegedly failing to minimize the possibility of a release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment. DTSC lists 42 individual releases that form the basis for this allegation. DTSC additionally claims that Chiquita did not directly notify DTSC of these alleged releases as required per the Summary of Violations issued by DTSC to Chiquita on February 15, 2024.

Chiquita Response to Allegation:

Chiquita denies that it violated 22 CCR § 66262.251, as alleged by DTSC, for several reasons. First, that provision does not currently apply to Chiquita (and did not apply during the time of the individual incidents cited by DTSC). Compliance with Section 66262.251 is a “condition for exemption” from permitting requirements under Section 66262.17, in the same way as the LDR provisions discussed above in the context of Allegation #1. Specifically, Section 66262.17(a)(6) states that one of the conditions for that exemption is that “[t]he large quantity generator complies with the standards in article 9 of this chapter.” And, Section 66262.251 is contained in Article 9. EPA has acknowledged that the “minimize release” provision is merely a condition for exemption, stating that “[t]he condition for exemption for LQGs at [40 CFR] § 262.17(a)(6)-(7) [the federal counterpart to 22 CCR § 66262.17(6)] references 40 CFR part 262 subpart M [the federal counterpart to Article 9].” (See 81 Fed. Reg. at 85,790). As discussed above with respect to Allegation #1, Chiquita is not (and has not been) required to meet the conditions for the LQG accumulation exemption from permitting set forth at Section 66262.17, because it is already covered by a different permitting exemption, namely the Immediate Response Exemption. Chiquita cannot have “violated” the conditions of an exemption that it did not need.

Second, Chiquita maintains that it nevertheless did comply with Section 66262.251.⁴ That provision states, in its entirety, that “[a] large quantity generator shall maintain and operate its facility to

⁴ Section 66262.251 was approved by the California Office of Administrative Law (“OAL”) on May 6, 2024, with an effective date of July 1, 2024. See OAL Regulatory Action Number: 2024-0322-01S. Accordingly, there could not have been a violation of this specific provision prior to July 1, 2024.

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- (1) minimize the possibility
- (2) of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents
- (3) to air, soil, or surface water
- (4) which could threaten human health or the environment.” (numbering added).

Each of these elements must be evaluated in assessing a potential violation:

- The provision only addresses releases from the “*facility*,” which is defined for these purposes as “all contiguous land and structures, other appurtenances, and improvements on the land used for the treatment, transfer, storage, resource recovery, disposal or recycling of *hazardous waste*.” (See 22 CCR § 66260.10 (emphasis added)). Thus, any releases from non-hazardous waste units are not relevant.
- The LQG is required only to “*minimize the possibility*” of covered releases, not to eliminate them entirely. It is well established that the occurrence of a release does not necessarily indicate that a generator failed to meet this requirement. (See, e.g., *U.S. v. Environmental Waste Control, Inc.*, 710 F. Supp. 1172, 1237 (N.D. Ind. 1989) (“40 C.F.R. § 265.31 [a federal provision with essentially the same language as § 66262.251] ...is not violated simply by a sporadic fire. The regulation requires the implementation of procedures designed to minimize fire. The occurrence of a single fire, quickly contained, does not persuade the court that EWC did not implement such procedures”), aff’d, 917 F.2d 327 (7th Cir. 1990); cert. denied, 499 U.S. 975 (1991)).
- The only releases that must be minimized under this provision are releases of “*hazardous waste or hazardous waste constituents*.” (See 22 CCR § 66262.251 (emphasis added)). Releases of non-hazardous wastes are not relevant under the provision.
- Only releases “*to air, soil, or surface water*” are covered. Indeed, a “*release*” is defined for these purposes as “spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing *into the environment*.” (See 22 CCR § 66260.10 (emphasis added)). Accordingly, releases that are contained do not implicate Section 66262.151.
- Only releases that could “*threaten human health or the environment*” are addressed by the provision. Thus, very small releases, and even larger releases that are quickly cleaned up, are not covered.

Chiquita has reviewed each of the 42 incidents referenced by DTSC in SOV Exhibit C, in light of the limited nature of § 66262.251, notwithstanding the fact that the Immediate Response Exemption applies to each incident. All of these incidents are also outside the scope of the provision for one or more of the following reasons:

- (1) The release did not involve hazardous material;
- (2) The release involved a small volume of material and therefore posed no significant threat to human health or safety, or the environment;
- (3) The release was promptly contained and therefore did not constitute a release into the environment;
- (4) The release did not exit a “*facility*” within the definition of that term;

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- (5) The release did not leave secondary containment and therefore posed no significant threat to human health or safety, or the environment and did not constitute a release into the environment.

The reasons described above, as well as the reasoning explained in Chiquita's March 15, 2024 response to DTSC's February 15, 2024 SOV, all support the appropriateness of Chiquita's current release reporting approach. DTSC requested in its February 15, 2024 SOV that "Chiquita Canyon, LLC...document and report all releases of hazardous waste to DTSC." Consistent with Chiquita's response to the February 15, 2024 SOV, Chiquita has and will continue to document and report to DTSC all releases required to be documented and reported under applicable laws and regulations. There have been no instances of a release of hazardous waste at the site that were required, under applicable laws and regulation, to be reported directly to DTSC since the February 15, 2024 SOV. Any releases requiring reporting were reported to the relevant agencies pursuant to Chiquita's release reporting approach, as supported by the Immediate Response Exemption and applicable law.

Moreover, to the extent that any of the incidents could potentially be deemed to be releases of the type addressed by § 66262.251, such incidents would have been isolated and would not negate the fact that Chiquita has implemented numerous procedures designed to minimize releases—which, as noted above, is all that the provision requires.

Since January 2024, dedicated staff members have conducted inspections for the presence of leachate seeps and pooling in the Reaction Area and stormwater channels pursuant to Condition 27(b) of the Stipulated Order for Abatement in Case No. 6177-4 ("SOFA"), issued by the South Coast Air Quality Management District ("South Coast AQMD"). These inspections have been documented and reported to the South Coast AQMD on a weekly and monthly basis, as required by SOFA Condition 27(c) and Condition 8(q)(iii). In the event a seep or pooling occurs, Chiquita immediately collects and contains any standing liquids in a sealed tanker trunk or leachate tank or redirects the liquid into the leachate collection system, in accordance with SOFA Condition 24. Chiquita also reports incidents in which liquid leaves the Landfill's footprint to the Los Angeles Regional Water Quality Control Board (the "Water Board") pursuant to Chiquita's Waste Discharge Requirements ("WDRs"). In response to the Unilateral Administrative Order ("UAO"), issued by EPA on February 21, 2024, Chiquita has also developed a Leachate Management Plan ("LMP"), which identifies practices to implement in the event a seep is discovered. Some measures outlined in the LMP include constructing containment structures to prevent leachate from traveling, ensuring the availability of cleaning equipment (e.g., vacuum trucks), and continued monitoring to prevent reoccurrence.

To decrease and combat seeps at the Landfill, Chiquita completed the West Slope Toe Drain Installation Project and North Slope Termination Project to better mitigate leachate seepage. As part of the projects, Chiquita installed a new toe drain and removed and replaced the temporary scrim liner that covered the area with 30-mil geomembrane liner. Since completing the projects earlier this year, Chiquita has seen a significant decrease in seeps. As of the date of this response, the last seep occurred on February 9, 2025.

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Additionally, as of August 28, 2024, under SOFA Condition 27(e), Chiquita is required to report the occurrence of leachate spills or leaks to South Coast AQMD. The majority of spills and leaks are mitigated on the day they occur. On October 18, 2024, pursuant to SOFA Condition 27(f), Chiquita developed Standard Operating Procedures (“SOPs”) for leachate tank operations in accordance with industry standards and best management practices. These SOPs outline procedures for tank filling and tank inspections conducted by Chiquita personnel, and establish leachate transfer guidelines. While these SOPs have not yet been approved by South Coast AQMD, Chiquita has proactively been implementing the SOPs to minimize potential spills and leaks. In addition to these SOPs, Chiquita has implemented additional best management practices to decrease the risk of spills and leaks. Examples of these measures include a valve tagging system, additional equipment inspections, and further training to Chiquita personnel. Since the implementation of the SOPs and additional efforts by Chiquita, the amount of liquid spilled or leaked has been trending downward. Chiquita also continues to expand its dewatering efforts to remove liquids from the Landfill pursuant to SOFA Conditions 17 and 18.

The efficacy of these procedures is demonstrated by the fact that the total volume of material involved in the incidents mentioned by DTSC is less than 0.01% of the total volume of leachate managed during the course of the 14-month period over which such incidents occurred.⁵

In sum, the “minimize release” provision in § 66262.251 does not currently apply to Chiquita (and has not applied throughout the period covered by DTSC’s allegation), because it is a condition for an exemption that the facility does not currently need (and has not needed during the relevant period). Chiquita nevertheless has satisfied the requirement to minimize releases. Accordingly, DTSC’s Allegation #2A is without merit.

Summary of DTSC Prescribed Actions:

- (i) DTSC states that Chiquita must operate its facility in a manner that minimizes the possibility of a sudden or non-sudden release of hazardous waste or hazardous waste constituents.
- (ii) DTSC further requests that Chiquita, within 72 hours of each and every release, send a Release Notification to DTSC, including the substance involved, the date and time of the release, the grid location and coordinates of the release, a detailed description of the release source (including, if applicable, tank number, tank train identification, dewatering bin identification, or well number), the cause of the release, the volume of the release, the duration of presence of the release, the waste determination of the release and any contaminated material that results from the mitigation of the release, sampling results (if applicable), photographs of the release, list of agencies notified of the release, and corrective actions taken, including the on-site disposition

⁵ The total estimated volume of leachate, in gallons, implicated by the 42 incidents listed in SOV Exhibit C is 6,427.5 gallons. This number utilizes the upper gallon limit reported when a gallon range was provided. From January 1, 2024 through March 16, 2025, roughly the same time period that the 42 incidents span, Chiquita estimates that it collected approximately 80,546,843 million gallons of leachate at the landfill. 6,427.5 is 0.00797982858% of 80,546,843 million gallons. This percentage would be lower if only relevant incidents were taken into account.

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and intended final destination of all recovered material and/or waste, and any contaminated media (i.e., tank farm number, train identification, tank number, grid number, and roll-off bin).

(iii) DTSC directs that all sample results for releases shall be sent to the Department within 48 hours of Chiquita's receipt of laboratory reports.

(iv) DTSC directs Chiquita, within 30 days of the SOV, to provide complete Release Notifications for each release listed in SOV Exhibit C (to the extent this information was not previously included in the reports posted on Chiquita's website or on the CalOES Spill Release Reporting Dashboard).

(v) DTSC directs Chiquita, within 30 days of the SOV, to provide a written explanation of mitigation measures taken to prevent future releases, any additional mitigation measures currently planned to address releases, and any plan for future mitigation measures should the prior or currently planned mitigation measures prove ineffective at minimizing releases.

Chiquita Response to DTSC Prescribed Actions:

The actions prescribed by DTSC with respect to Allegation #2A are without foundation, given that the allegation is without merit, as discussed above. Nevertheless, in the interest of cooperation and transparency, Chiquita also addresses each of DTSC's prescribed actions, as outlined below.

(i) As described in detail above, Chiquita has implemented and will continue to implement procedures designed to minimize the possibility of a sudden or non-sudden release of hazardous waste or hazardous waste constituents from the facility into air, soil, or surface water that could threaten human health or the environment.

(ii) As DTSC is aware, Chiquita is subject to numerous release reporting requirements from several agencies. Under SOFA Condition 27(e), Chiquita reports to South Coast AQMD each leachate spill or leak within 48 hours of discovery. Under SOFA Condition 27(c), Chiquita also summarizes to South Coast AQMD on a weekly basis any leachate seep that occurred during the previous week. Under Chiquita's WDRs, Chiquita must also report to the Water Board within 24 hours of any leachate seep from the landfill, and provide a follow-up report within 7 days.

These existing reporting requirements from South Coast AQMD and the Water Board already meet DTSC's request that regulators be notified of releases within 72 hours. In the spirit of cooperation and transparency, Chiquita has been providing courtesy copies of these reports to DTSC via email since receiving the SOV. Chiquita is willing to continue this practice. These reports contain most of the information that DTSC requests be included in its "Release Notifications." The additional information DTSC requests is not feasible to provide or would be burdensome to include, as the information may not be collected in the first place. If DTSC nevertheless believes that additional information pertaining to future releases is necessary, Chiquita would appreciate the opportunity to discuss a reasonable approach. As currently

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described in DTSC's SOV, imposing additional reporting requirements with additional data elements is unduly burdensome and has the potential to distract from effective release response.

(iii) Chiquita is unaware of the basis for this request, as no citation has been provided. Chiquita does not sample releases. Sampling a release would prevent Chiquita from immediately cleaning it up, which is required by the South Coast AQMD Stipulated Order. Any standing liquid from a release is collected and contained. Leachate is ultimately sampled prior to being shipped offsite.

(iv) Preparing additional Release Notifications for all 42 incidents listed in SOV Exhibit C would be duplicative of the notifications already provided, and would unnecessarily divert resources from ongoing operational and compliance activities. It would also be unreasonably burdensome to require Chiquita to reinvestigate previously noticed incidents, some of which are more than a year old. Chiquita does not track all of the information DTSC has requested, and this information cannot be readily reconstructed for incidents that occurred in the past. The information already contained within the reports for the 42 incidents should be sufficient for DTSC's enforcement and compliance purposes and is readily available on Chiquita's website, which includes download links to all 42 reports, and in the CalOES Spill Release Reporting Dashboard (where applicable), all of which is already available for DTSC's review. For DTSC's convenience, Chiquita provides the relevant reports for all 42 incidents referenced in SOV Exhibit C in **Attachment 6**.⁶ If DTSC nevertheless believes that additional information pertaining to these 42 incidents is needed, Chiquita would appreciate the opportunity to discuss a reasonable approach.

(v) Chiquita has updated the design of its leachate management system, which has been described in detail in the LMP and related updates. These design updates include, but are not limited to, the west slope excavation project and redirection of leachate, as described above. Chiquita has also developed several SOPs for managing hazardous leachate and minimizing releases, including a Tank Inspection SOP, a Leachate Transfers by Truck SOP, and a Leachate Transfers by Pump SOP. Together, these SOPs require Chiquita personnel to take significant measures to prevent releases. These measures include: performing an inspection of each leachate tank as required by the specific tank's requirements, ensuring that each tank has available freeboard for the authorized liquids, visually inspecting tanks to confirm there is no visible physical damage prior to transfer, determining the expected fill time, monitoring the sight glass on front of tanks to ensure filling does not surpass tank capacity (if applicable), verifying which truck is authorized to load and directing drivers to the appropriate loading position, and visually inspecting the tank and area to make sure there were no spills during and after transfer.⁷ Chiquita added employees and shifted responsibilities from contractors to employees where possible, to

⁶ DTSC alleges an incident involving an "unknown" amount of liquid from a condensate tank in Count 41. Chiquita has not immediately identified any reports that match DTSC's incident description for this Count. If DTSC has additional information pertaining to this incident, please let Chiquita know so that the appropriate report can be identified.

⁷ Chiquita submitted the Tank Inspection SOP, the Leachate Transfers by Truck SOP, and the Leachate Transfers by Pump SOP to South Coast AQMD on October 14, 2024. South Coast AQMD has not yet provided comments on the SOPs, but Chiquita has been proactively implementing them as part of its regular protocol to minimize releases.

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further improve the processes. Chiquita also provides training to employees who are handling leachate, which is refreshed as needed.

Additionally, new SOFA Condition 93 requires Chiquita to install hydrostatic liquid level transmitters in all leachate storage tanks capable of having such transmitters installed to measure the level of liquids within the tanks, and for Chiquita personnel to monitor and communicate tank level information to necessary personnel involved before and during tank filling operations. These measuring and monitoring requirements will further minimize the potential for releases.

In sum, Chiquita did not violate 22 CCR § 66262.251. Chiquita has implemented numerous actions, precautions, analysis, and measures to minimize the potential for releases, which obviate the need to provide additional information for the incidents described in SOV Exhibit C, in addition to being an unduly burdensome endeavor. If DTSC nevertheless believes that all of the actions, precautions, analysis, and measures already in place are insufficient, Chiquita will make itself available to discuss DTSC's requests.

Allegation #2B – Failure to Minimize the Possibility of a Release of Hazardous Waste

Summary of DTSC Allegation:

DTSC alleges that, beginning "on or before" February 17, 2025, Chiquita violated the "minimize release" provision in 22 CCR § 66262.251 by treating and/or storing hazardous waste leachate, leachate that has been treated below hazardous waste regulatory thresholds, and condensate in Tank Farm #9 when settlement has allegedly started to occur "adjacent to" or "around" the tank farm. According to the SOV, "[s]ignificant" settlement "may have" a negative impact on the integrity and/or stability of the tanks and their associated ancillary equipment, which "could" result in hazardous waste leachate releases.

Chiquita Response to Allegation:

Chiquita denies that it has been or is currently violating 22 CCR § 66262.251, as alleged by DTSC, for several reasons.

First, as explained above in the discussion of Allegation #2A, the "minimize release" provision in § 66262.251 does not currently apply to Chiquita. Instead, it is a condition for a permitting exemption that the facility does not currently need, because the facility is currently operating under a different permitting exemption, namely the Immediate Response Exemption. Chiquita cannot be in "violation" of a condition for an exemption that it does not need.

Second, as also discussed above in the context of Allegation #2A, Section 66262.251 addresses only releases of hazardous wastes and hazardous waste constituents from the "facility," defined as the units that manage *hazardous* wastes. To the extent that Allegation #2B is alleging that Chiquita violated § 66262.251 by failing to minimize the potential for releases from non-hazardous waste tanks or associated ancillary equipment (*e.g.*, tanks or equipment containing

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leachate that has been treated below hazardous waste regulatory thresholds), such an allegation cannot be sustained.

Third, DTSC's suggestion that current conditions in Tank Farm #9 may jeopardize the integrity of the tank system and result in hazardous waste releases is purely speculative and therefore an insufficient basis for an allegation of a violation of § 66262.251. As discussed above in the context of Allegation #2A, a single release (or even potentially more than one) is not sufficient to demonstrate that a facility has failed to meet the "minimize release" standard. However, DTSC is now claiming the standard is not met when there is merely (in DTSC's view) a theoretical possibility that nearby settling could be substantial enough (and presumably sudden enough) to undermine the integrity of the tanks and result in a release that could threaten human health or the environment, at some unspecified point of time in the future. This is simply not what § 66262.251 requires (even if it applied to the Chiquita facility, which it does not, as discussed above).

Finally, Chiquita disputes that current conditions at Tank Farm #9, in fact, present the types of risks that DTSC claims. While some cracks or fissures have been found nearby, most appear to be the result of minor and gradual settling due to the slow compaction of buried wastes in the underlying landfill, not a major void underground nor one created by rapid thermal breakdown of buried waste due to expansion of the elevated temperature event into the area under Tank Farm #9. Chiquita has addressed (and intends to continue addressing) cracks and fissures in that area and elsewhere in and around the reaction area in a timely and effective manner, by adding cover soil and re-grading, as necessary. The cracks identified in grid 148 in the vicinity of Tank Farm #9 were repaired by placing soil and track-walking over the cracks and have not reappeared. If the reaction was underneath the tank farm and causing this degradation, the cracks would be expected to promptly reappear. Chiquita also inspects the tank system daily for evidence of leaks or conditions that could result in the development of leaks. To date, no leaks resulting from settling of the tanks at Tank Farm #9 have ever been observed.

While Chiquita disagrees with the underlying rationale, Chiquita nevertheless agrees that the tank farm should be relocated. Chiquita therefore intends to comply with the requirement to relocate the leachate storage tanks within Tank Farm #9 from the "top deck" to a stable location within the Landfill. As Chiquita's regulators, including DTSC, are aware, Chiquita has been diligently planning an effective and safe relocation of Tank Farm 9 since July 2024.⁸ Since then, Chiquita has regularly discussed and actively planned the installation with LA County Fire, the Certified Unified Program ("CUPA") Agency, as well as DTSC, EPA, CalEPA, and other MCAT agencies.⁹

Chiquita also disagrees with the conclusions in Dr. Stark's Technical Memorandum that DTSC cites in the SOV. DTSC references elevated temperatures of 185°F to 189°F in the area around the tank farm. However, these temperatures are in situ waste temperatures, not wellhead temperatures. Wellhead temperatures are regulated by the EPA through New Source

⁸ See 2024-07-19 Email Correspondence to LA County Fire, provided in **Attachment 7**.

⁹ See Compilation of Email Correspondence between Chiquita and LA County Fire and EPA re Tank Farm Relocation, provided in **Attachment 8**.

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Performance Standards (“NSPS”), which establish a temperature threshold of 145°F (62°C) for gas measured at the wellhead. Wellheads are compliant if their temperature is below that temperature. Published studies have found that in situ waste temperatures can be 68°F (20°C) hotter than wellhead temperatures. Thus, in situ temperatures of 185°F to 189°F do not necessarily indicate that the gas wellhead temperatures are above EPA’s NSPS threshold of 145°F and therefore do not necessarily indicate a reaction.

Further, temperature alone cannot be used as the basis for determining the boundaries of the reaction. (*See* South Coast AQMD SOFA Condition 9 [describing the reaction area boundary determination criteria]). Dr. Stark’s report focuses primarily on temperature. In contrast, Chiquita’s constant data monitoring evaluates all the potential indicators of a reaction, including but not limited to settlement, gas composition, and temperature both in situ and at the wellhead. When looking at the data as a whole, including cracks identified in the area of the tank farm, Chiquita’s experts have determined that the reaction has not spread to this area. Other data points considered include gas composition of nearby wells, wellhead temperature, and actual settlement strain rate as opposed to the presence of cracks in the cover. Cracks in landfill cover are common at all landfills due to typical settlement and loading at the top of the landfill from vehicle movement. Settlement over the past two years in the area of Tank Farm #9 is typical of a deep landfill with liquids extraction and does not show accelerated settlement as seen within the reaction area. Gas composition of wells near and to the east of Tank Farm #9 show typical landfill methane with less than 2 percent hydrogen and 1,500 ppm of carbon monoxide, indicating no reaction presence.¹⁰

As described above, Chiquita constantly evaluates numerous datapoints throughout the Landfill for signs of a reaction, as documented, for example, in its monthly reaction area determinations submitted under Condition 9 of the South Coast AQMD Stipulated Order. Chiquita will have ample time to take any additional steps that might be necessary, if any risks increase materially. The actions, precautions, analysis, and measures described above are precisely the types of procedures that are envisioned under § 66262.251 as minimizing the potential for releases. *See, e.g., U.S. v. Environmental Waste Control, Inc.*, 710 F. Supp. at 1237 (“40 C.F.R. § 265.31 [a federal provision with essentially the same language as § 66262.251] … requires the implementation of *procedures* designed to minimize fire [or releases]” (emphasis added)).

Summary of DTSC Prescribed Actions:

- (i) DTSC states that Chiquita must operate its facility in a manner that minimizes the possibility of a sudden or non-sudden release of hazardous waste or hazardous waste constituents.
- (ii) DTSC directs that Chiquita must not treat or store hazardous waste leachate, treated leachate, or hazardous waste condensate in areas that are impacted, or have the potential to be

¹⁰ CalRecycle and the Local Enforcement Agency mandated that two additional data points, hydrogen concentrations of less than 2 percent and carbon monoxide concentrations of less than 1,500 ppm, be considered as additional gas concentration data points to determine threshold criteria limits for evaluating the scope of the reaction.

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impacted by, significant settlement or high subsurface temperatures which reasonably could result in significant settlement.

(iii) The Department requests that all tanks and ancillary equipment involved in the treatment and storage of hazardous waste or hazardous waste constituents be managed properly to prevent the possibility of a release.

(iv) DTSC requests that, within 30 days of the SOV, Chiquita provide a written statement, including photographs, documenting how the facility has “returned to compliance.”

(v) The Department specifies that Chiquita must consider CalEPA’s criteria provided on March 6, 2025 when relocating leachate and condensate tanks, and must notify DTSC in writing in advance of all leachate and condensate tank movements.

(vi) DTSC requests that Chiquita provide up-to-date, annotated landfill maps of leachate or condensate collection, treatment, and storage areas, and specifies that these maps must include accurate and current labeling of tank numbers, well heads, and piping. DTSC also specifies that the maps must accurately designate which tanks hold hazardous and treated leachate and/or condensate, as well as the associated leachate train of origin.

(vii) DTSC requests Chiquita to send isopach maps, landfill settlement maps, and maximum vertical temperature maps from temperatures probes on a weekly basis to the Department.

Chiquita Response to DTSC Prescribed Actions:

The actions prescribed by DTSC with respect to Allegation #2B are without foundation, given that the underlying allegations are without merit, as discussed above. Nevertheless, in the interest of cooperation and transparency, Chiquita addresses each of DTSC’s prescribed actions, as outlined below.

(i) As noted above in the context of Allegation #2A, Chiquita has implemented and will continue to implement procedures designed to minimize the possibility of a sudden or non-sudden release of hazardous waste or hazardous waste constituents from the facility into air, soil, or surface water that could threaten human health or the environment, thereby meeting the “minimize release” standard of § 66262.251 (even though that standard is not currently applicable to the facility).

(ii) Chiquita cannot agree to a vague and overbroad commitment to not manage hazardous waste leachate, treated leachate, or hazardous waste condensate in “areas” that are “impacted,” or have the “potential” to be impacted, by “significant” settlement or “high” subsurface temperatures which reasonably could result in “significant” settlement. As discussed above, these conditions as described do not exist in the Tank Farm #9 area and Chiquita’s efforts to minimize potential impact are reasonable, including daily inspections and promptly addressing any issue identified. Further, as discussed above, Chiquita has been trying to move Tank Farm #9 since July 2024, but has been unable to do so because of regulatory hurdles. Now, Chiquita has

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been directed to draft and implement a Removal Action Workplan (“RAW”) under DTSC’s Imminent and Substantial Endangerment Determination and Order (“DTSC Order”), Docket No. HSA-FY24/25-082, issued on April 2, 2025 that moves the tank system in Tank Farm #9 from its current location to an interim location. Chiquita assumes that moving the tank farm in compliance with the RAW approved by DTSC will be sufficient for compliance with this prescribed action.

(iii) As noted above, even though Chiquita is not currently subject to the “minimize release” requirement of § 66262.251, it has been (and intends to continue) implementing procedures designed to minimize the possibility of a release of hazardous waste or hazardous waste constituents from the facility—including all hazardous waste tanks and their ancillary equipment—into air, soil, or surface water that could threaten human health or the environment.

(iv) The facility has not been out of compliance with the “minimize release” requirement of § 66262.251. Section 66262.251 is not currently applicable to the facility, and in any event, the facility has met and continues to meet the standard set forth in that provision. There is therefore no need for a written statement documenting how the facility has “returned to compliance.” Even if Chiquita were subject to this requirement, DTSC’s request to provide by May 1, 2025 a written statement documenting how the facility has “returned to compliance” is inconsistent with the RAW required under the DTSC Order to relocate Tank Farm #9. Chiquita has been given until May 9, 2025¹¹ to submit a draft RAW detailing the interim relocation of Tank Farm #9. These two deadlines conflict, as Chiquita cannot move Tank Farm #9 by May 1, 2025 if a draft RAW detailing the relocation of Tank Farm #9 is not due pursuant to the DTSC Order until May 9, 2025 and then subject to DTSC approval.

(v) Chiquita has been considering CalEPA’s criteria provided on March 6, 2025 as it works to relocate leachate and condensate tanks. Chiquita is also submitting to DTSC a draft RAW detailing the interim relocation of Tank Farm #9 on May 9, 2025, subject to DTSC approval. Chiquita cannot, however, commit to notifying DTSC in writing of all leachate and condensate tank movement, as situations may arise requiring leachate or condensate tank movement that precludes the facility’s ability to notify DTSC in writing in advance. Nevertheless, Chiquita will notify DTSC in writing of anticipated, significant movements, including the interim relocation of Tank Farm #9 under the RAW.

(vi) The current location of Tank Farm #9 is not in violation of the requirement to minimize the possibility of a release, for the reasons described herein, and therefore Chiquita is already in compliance. Chiquita nevertheless provides up-to-date, annotated landfill maps of leachate or condensate collection, treatment, and storage areas as [Attachment 9](#). Chiquita prepares monthly maps of the leachate tanks and manifolds for South Coast AQMD under SOFA Condition 38, which are available on Chiquita’s Odor Mitigation webpage.¹² If DTSC believes additional detail

¹¹ On April 22, 2025, Chiquita formally requested an extension to submit the draft RAW for Tank Farm #9 to May 9, 2025. DTSC confirmed approval in writing on April 26, 2025.

¹² Chiquita’s Odor Mitigation webpage is accessible at <https://chiquitacanyon.com/odor-mitigation/>. From there, click on the “Stipulated Order for Abatement” tile. To locate the monthly tank farm maps, expand the “South Coast

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beyond the maps prepared under the SOFA is necessary going forward, Chiquita would appreciate the opportunity to discuss a reasonable approach.

(vii) As noted in Chiquita's interim responses to this request, Chiquita currently prepares and submits to the LEA the requested maps on the following schedule: isopach maps quarterly, settlement maps bi-monthly, and maximum vertical temperature maps weekly and monthly. Providing isopach maps at the requested weekly frequency would be unduly burdensome. The isopach maps are created on a quarterly basis by comparing two profiles, which are not available for comparison on a more frequent basis than what is already utilized, as previously discussed with the LEA. Like the isopach maps, providing settlement maps at the requested weekly frequency would be unduly burdensome, as the settlement maps are created by comparing the flyover data and imagery collected via drone every two weeks. Chiquita therefore cannot provide the requested isopach maps or settlement maps on a weekly basis. All three requested maps are available on Chiquita's Odor Mitigation webpage as they become available.¹³

In sum, Chiquita did not violate 22 CCR § 66262.251. Chiquita has been working diligently to minimize the potential for releases, despite regulatory hurdles, and will continue to do so.

Other DTSC Issues/Concerns

In Section II of the SOV, DTSC lists five additional areas of concern identified during its investigation. Each area is discussed separately below.

Issue/Concern 1 – Notification to DTSC of Releases that May Have Involved Hazardous Waste

Chiquita Response:

It does not appear that DTSC is alleging a violation with respect to "Issue/Concern 1," and Chiquita disputes any suggestion that there is an associated issue or concern. Chiquita agrees that there has been no violation with respect to this identified "issue/concern," as explained above under Allegation #2A. Chiquita will continue documenting and reporting to DTSC all releases required to be documented and reported under applicable laws and regulations. As described above under Allegation #2A, Chiquita is also willing to provide a courtesy copy to DTSC of its reports via email to the South Coast AQMD pursuant to Conditions 27(c) and 27(e) of the Stipulated Order and to the Water Board pursuant to Chiquita's WDRs, in its ongoing spirit of

AQMD" tile and look under "Monthly leachate sampling results submitted pursuant to Condition 38 of the Stipulated Order."

¹³ Chiquita's Odor Mitigation webpage is accessible at <https://chiquitacanyon.com/odor-mitigation/>. From there, click on the "Stipulated Order for Abatement" tile. To locate the quarterly isopach maps and the bi-monthly settlement maps, expand the "Local Enforcement Agency" tile and look under "Weekly updates on cover issues in accordance with Milestone 2B." The weekly and monthly maximum vertical temperature maps are also located under the "Local Enforcement Agency" tile under "Weekly submittals of all temperature monitoring probe data in accordance with Mitigation 1B."

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cooperation and transparency. These copies should not be construed as an admission that the reports are statutorily or regulatorily required.

DTSC's request to provide Release Notifications "for each individual incident listed in Exhibit E 1 through 96 attached and all releases to-date that are not listed in either Exhibit C or Exhibit E" is unduly burdensome and unreasonable for the reasons provided above under Allegation #2A.

With respect to any remaining incidents that are not listed in either SOV Exhibit C or SOV Exhibit E for which DTSC requests Release Notifications, DTSC already has ready access to any such incidents via Chiquita's website and the CalOES Spill Release Reporting Dashboard, which contain much of the requested information for each incident.

Issue/Concern 2 – Safety Data Sheet, Description, and Sample Results Associated with July 22, 2024 Incident

Chiquita Response:

It does not appear that DTSC is alleging a violation with respect to "Issue/Concern 2," and Chiquita disputes any suggestion that there is an associated issue or concern regarding the July 22, 2024 incident. Chiquita nevertheless provides the requested information relating to this incident. Chiquita's understanding of the incident, as reported by Clean Harbors, is as follows:

On Monday, July 22, 2024, at approximately 12:09 p.m. PST, a Clean Harbors employee was unloading a 275-gallon tote of 50 percent water and sodium hydroxide solution from an 18-wheel, flatbed truck to an approved secondary containment zone. The driver was utilizing a spotter to provide visibility and direction from outside the operating forklift. While the driver was in transit from the truck to the secondary containment, the tote bounced off the forks, fell from two to three feet height, and the top of the tote broke open and released approximately 200 gallons of the solution to the compacted earthen road. The driver contacted his supervisor, who alerted onsite personnel. Clean Harbors and Chiquita personnel used absorbent material to create a short berm around the impacted area, then deployed additional absorbent and clean soil to allow the solution to be absorbed, collected, and deposited in a clean roll off container. The area was scraped down until the soil ceased showing liquid impacts. All impacted soil was deposited into a 20 yard roll off container and tested for appropriate disposal, the results of which are provided in **Attachment 10**.

If Chiquita identifies or receives additional information regarding the final destination of the impacted soil and other media, Chiquita will supplement its response.

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Issue/Concern 3 – Description, Cleanup Actions, and Final Destination of Impacted Media Associated with June 19, 2024 Incident

Chiquita Response:

It does not appear that DTSC is alleging a violation with respect to “Issue/Concern 3,” and Chiquita disputes any suggestion that there is an associated issue or concern regarding the June 19, 2024 incident. The incident did not involve Chiquita personnel and did not occur at the Landfill; rather, the incident involved a third-party trailer and an off-site spill on Highway 126.

Issue/Concern 4 – Authorization to Treat Hazardous Waste Leachate On-Site

Chiquita Response:

It does not appear that DTSC is alleging a violation with respect to “Issue/Concern 4,” and Chiquita disputes any suggestion that there is an associated issue or concern.

Chiquita continues to operate under the Immediate Response Exemption. Chiquita repeatedly has provided DTSC sufficient information to support the continued use of this exemption, as discussed above in footnote 2. If DTSC believes it needs additional information in this regard, Chiquita requests that DTSC state what specific additional information it believes is necessary.

As the SOV acknowledges, and as previously discussed, Chiquita has been actively working toward obtaining the appropriate authorization to treat hazardous waste leachate on-site. Chiquita intends to continue with these efforts as expeditiously as possible, pursuant to the DTSC-approved RAW timeline pertaining to the relocation of Tank Farm #9 under the DTSC Order, subject to any delays resulting from reviews by the relevant regulatory agencies involved.

Issue/Concern 5 – Current Waste Determination Information for all Leachate Waste Generated at the Facility

Chiquita Response:

It does not appear that DTSC is alleging a violation with respect to “Issue/Concern 5,” and Chiquita disputes any suggestion that there is an associated issue or concern. Nevertheless, Chiquita provides the requested current waste determination information for all leachate waste generated at the facility in **Attachment 11**. The waste determinations are made at the point of generation for each leachate group, before any treatment or alteration of the waste occurs. Waste characterization sampling ports have been installed for the Group A, Group B, and Group C wells along the leachate management system’s force mains after the wellheads and before the leachate enters the accumulation tanks that hold the leachate prior to treatment. Samples of the leachate from the #2 East Perimeter and #6 North Perimeter wells are collected from sample ports attached at the respective force main manifolds which connect to the designated accumulation frac tanks, which hold the leachate prior to trucking to Tank Farm #9 for treatment. There have been no significant changes to the leachate generation process. The waste

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determinations, as well as the analytical results for treated leachate, determine the appropriate management and final disposition of the waste. These determinations have been conducted and continue to be in accordance with the criteria set forth in Title 22 of the California Code of Regulations (22 CCR), specifically section 66262.11. We remain committed to maintaining compliance with all applicable regulations and will continue to review and update our waste determinations as needed.

As noted above, Chiquita is providing this information in the interest of continued cooperation with its regulators. The information, documents, and attachments provided herein should not be construed as an admission of any factual allegation or legal conclusion in the SOV or an admission of any liability for any matter described in the SOV. Chiquita remains available to discuss these issues as needed. Please contact me if you have any questions.

Regards,

Steven J Cassulo
Steve Cassulo
District Manager
Chiquita Canyon, LLC

Enclosures

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Wes Mindermann, CalRecycle
Todd Thalhamer, CalRecycle
Jeff Lindberg, California Air Resources Board
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Larry Israel, South Coast Air Quality Management District
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