



Jacob P. Duginski  
333 Bush Street, Suite 1500  
San Francisco, CA 94104  
+1.415.262.4018  
JDuginski@bdlaw.com

Megan L. Morgan  
Kaitlyn D. Shannon  
1900 N Street, NW, Suite 100  
Washington, DC 20036  
+1.410.230.1343  
+202.789.6088  
MMorgan@bdlaw.com  
KShannon.@bdlaw.com

February 11, 2026

***Via E-Mail***

Thanne Berg  
Deputy Director  
Site Mitigation and Restoration Program  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, CA 95826  
Thanne.Berg@dtsc.ca.gov

**Re: Response to DTSC’s January 26, 2026 Final Determination of Noncompliance With, and Violation of, Imminent and Substantial Endangerment Determination and Order, Docket No. HAS-FY24/25-082, In re Chiquita Canyon Landfill**

Dear Ms. Berg:

On January 26, 2026, the Department of Toxic Substances Control (DTSC) issued a Final Determination of Noncompliance With, and Violation of, Imminent and Substantial Endangerment Determination and Order, Docket No. HAS-FY24/25-082, In re Chiquita Canyon Landfill (Determination). Respondents Chiquita Canyon, LLC (Chiquita), Chiquita Canyon, Inc. (CCI), and Waste Connections US, Inc. (WCUS) provide the following response.<sup>1</sup>

Chiquita disagrees with each allegation in the Determination. Chiquita’s draft Removal Action Workplans (RAWs) satisfy the requirements of the April 2, 2025 Imminent and Substantial Endangerment Determination and Order (ISE Order). As discussed in Chiquita’s January 12,

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<sup>1</sup> As discussed in Sections III and IV, CCI and WCUS respond to the Determination in their individual capacities for the purpose of contesting jurisdiction only and to note that Chiquita’s January 12, 2026 response to the Notice should not be construed as a waiver of any arguments by CCI and WCUS.

2026 response to DTSC's December 26, 2025 Notice of Proposed Determination of Noncompliance with Imminent and Substantial Endangerment Determination and Order (Notice), Chiquita has worked diligently and cooperatively to provide DTSC with copious amounts of information and developed tailored solutions to control the reaction and mitigate impacts effectively and efficiently. These actions include developing draft RAWs that satisfy the ISE Order's requirements and completing (Relocation RAW) and partially completing (Cover RAW) two removal actions required by the ISE Order prior to RAW finalization. DTSC's Determination does not account for Chiquita's two-plus years of constant engagement and cooperation with DTSC and federal, state, and local regulators to manage the reaction while complying with regulators' multiple orders and directives.

Respondents submit this response to maintain and preserve their respective objections regarding the ISE Order and Determination. This response is made without waiver of any rights, remedies, defenses, claims, or objections, whether legal or factual. Nothing in this response shall be construed as an admission of noncompliance, a concession that DTSC's asserted requirements are authorized or reasonable, or an agreement that DTSC's stated interpretations of the ISE Order are correct or authorized. Respondents reserve all rights to assert all defenses available under the law in any action or proceeding.

## **I. Objections to Alleged Violations.**

DTSC's Determination makes sweeping conclusions but provides no supporting data, scientific analyses, or evidentiary basis demonstrating that DTSC's interpretations of certain aspects of the ISE Order's removal action requirements are necessary or will improve outcomes, particularly where Chiquita's reaction mitigation efforts have already made substantial progress and must not be disrupted. Chiquita cannot agree to DTSC's demands without first determining that they are reasonable—i.e., safe, feasible, and effective, considering worker safety, site conditions, and the need to maintain effective reaction mitigation efforts.

### **a. Chiquita Submitted an Approvable Cover RAW.**

Chiquita's Cover RAW satisfied the ISE Order's requirements. DTSC's blanket requirement to cover "all areas" of the landfill is overbroad, unsupported by evidence, and against the guidance of experts. In addition, DTSC's demanded schedule is not feasible and would impair ongoing reaction mitigation efforts, which renders it unreasonable and unjustified. Most importantly, Chiquita's sequenced schedule appropriately reflected safety and construction constraints that must be considered to ensure safe and proper installation.

### **b. Chiquita Submitted an Approvable Relocation RAW.**

Chiquita's Relocation RAW satisfied the ISE Order's requirements. DTSC's conclusion that the new tank farm's location is unstable or vulnerable to the reaction is conclusory and unsupported

by data. In addition, DTSC failed to identify any specific deficiency in the slope stability materials that Chiquita submitted in support of this RAW. Further, DTSC's speculative assertions regarding the risk of release do not account for containment, controls, and Chiquita's monitoring of the reaction by continually assessing the latest data and constantly observing on-the-ground conditions.

### **c. Chiquita Submitted an Approvable Protection RAW.**

Chiquita's Protection RAW satisfied the ISE Order's requirements. DTSC has not provided scientific evidence that the DTSC-proposed vertical barrier would prevent reaction intrusion into Cell 8A if the reaction were to spread to that point (which currently appears highly unlikely). DTSC has not provided an engineering analysis demonstrating that the vertical barrier can be constructed as DTSC envisions and is seeking to require. Further, DTSC has not performed any analysis assessing the likelihood of the vertical barrier's success relative to the known and expected significant negative odor and landfill stability impacts of attempting the unprecedented construction that would be required for the proposed vertical barrier. Notably, Chiquita's experts have demonstrated (and will continue to demonstrate) the opposite—construction of the vertical barrier is infeasible, unlikely to succeed, and likely to make odors worse and negatively impact landfill stability. In addition, the DTSC-proposed vertical barrier is contrary to EPA guidance for treating elevated temperature landfill events. Finally, the Determination's finding of a violation for this RAW is premature because Chiquita has been and remains engaged with DTSC's technical team discussing potential alternative measures to address this RAW.<sup>2</sup>

## **II. Reservation of Right to Object to Alleged Noncompliance.**

Chiquita objects to DTSC's issuance of the Determination and associated penalty threats as premature, unnecessarily punitive, and unsupported by evidence. DTSC's Determination substitutes conclusory statements for objective standards, technical findings, and data-based analyses. The Determination also unreasonably disregards Chiquita's cooperation, open communication, and good-faith efforts to comply with regulatory orders and directives while using its best professional judgement and efforts to manage the reaction effectively and efficiently.

The Determination's threat of penalties up to \$25,000 per day, per entity, is unreasonable and unsupported. DTSC's approach does not advance mitigation or constructive coordination.

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<sup>2</sup> For example, DTSC issued a letter to the landfill on February 9, 2026, that requires a scoping meeting by February 20, 2026, to discuss potential alternatives that will meet the ISE Order's objectives. The letter also requires "a Feasibility Study/RAW with acceptable alternatives, a selected alternative, and triggers for implementing the selected alternative" by March 30, 2026. Chiquita acknowledged receipt of the letter during its February 10, 2026 Weekly Technical Status Meeting with DTSC and CalRecycle. Chiquita will soon respond separately to schedule the scoping meeting.

Instead, it seeks to compel acceptance of unprecedented construction demands without proper analysis and supporting data to justify measures of this magnitude.

Chiquita objects to DTSC's suggestion that Chiquita "missed deadlines" or is subject to penalties for failing to complete ISE Order requirements where DTSC had not clearly identified the standards required to satisfy the requirements. Chiquita has not missed any deadlines previously established by DTSC for submitting alternatives or revised RAW components. DTSC cannot seek to impose penalties based on alleged failures to take actions where DTSC did not clearly articulate expectations supported by science and data. DTSC's Determination improperly attempts to convert iterative draft review, evolving comments, and ongoing agency engagement into "noncompliance" without a clear, prospective compliance trigger and opportunity to cure.

Chiquita has acted diligently and in good faith to comply with the ISE Order, including through starting removal actions prior to RAW approval, iterative submittals, and regular meetings and communications to keep DTSC apprised of ongoing efforts demonstrating compliance with the ISE Order and effective reaction mitigation.

### **III. DTSC Improperly Included Chiquita Canyon, Inc. and Waste Connections US, Inc. as Respondents in the ISE Order.**

As previously stated in Chiquita's April 9, 2025 Notice of Intent to Comply with the ISE Order (Notice of Intent to Comply), CCI and WCUS were improperly named as respondents in the ISE Order because it is beyond the scope of DTSC's authority to name either entity. Thus, CCI and WCUS object in their individual capacities to being named as respondents. California Health and Safety Code (HSC) Section 78870 authorizes DTSC to issue an order to a "responsible party." HSC Section 78145 defines "responsible party" or "liable person" as "those persons described in Section 107(a) of [CERCLA] (42 U.S.C. Sec. 9607(a))." Based on CERCLA Section 107(a), a "responsible party" or "liable person" is (1) the owner or operator of a facility, (2) any person who owned or operated a facility at the time of disposal of hazardous substances at the facility, (3) any person who arranges for transport of a hazardous substance, and (4) any person who accepts hazardous substances for transport to a site selected by such person, from which there is a release or threatened release of a hazardous substance. Neither the ISE Order nor any of DTSC's subsequent communications allege facts to support that CCI or WCUS are a "responsible party" or "liable person" within the meaning of these provisions, and no such facts exist. The ISE Order's assertions are limited to corporate affiliation and general assertions of control of Chiquita by CCI and/or WCUS, which do not equate to being a "responsible party" or "liable person" under HSC Section 78870 and HSC Section 78145 (per CERCLA Section 107(a)).<sup>3</sup>

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<sup>3</sup> See *Gerritsen v. Warner Bros. Entm't Inc.*, 116 F.Supp. 3d 1104, 1139 (C.D. Cal. 2015) (common business departments and employees are "common aspects of parent-subsidary relationships").

Neither WCUS nor CCI owns or operates the landfill, and DTSC does not allege otherwise. Similarly, neither WCUS nor CCI have arranged for transport of hazardous substances or accepted hazardous substances for transport to the landfill, and DTSC does not allege otherwise. DTSC limits its allegations to corporate relationships and general oversight, which is not the same as being “the owner of property on which a reportable release has occurred” or “release[ing] . . . allow[ing] or caus[ing] a release,” and DTSC offers no facts bridging this gap. DTSC has not sufficiently alleged any basis for including the separate corporate entities CCI and WCUS as respondents in the ISE Order and the Determination. Accordingly, CCI and WCUS object to being named as respondents in the ISE Order and, in turn, the Determination.

#### **IV. Objection to Waiver of Rights.**

CCI and WCUS maintain that their inclusion in the ISE Order was inappropriate and unauthorized. Accordingly, CCI and WCUS did not respond to DTSC’s December 26, 2025 Notice of Proposed Determination, and continue to object to their inclusion in the ISE Order and the Determination.

DTSC alleges that “only Chiquita Canyon LLC has responded . . .” and that “[f]ailure to respond by [CCI and WCUS] is a waiver.” CCI and WCUS each disagree that any such waiver has taken place. The Notice of Intent to Comply objected to CCI’s and WCUS’s inclusion in the ISE Order on the grounds that neither entity owned or operated the Landfill, nor caused a release or threat of release of hazardous substances, nor arranged for disposal of hazardous substances on behalf of or at the landfill. DTSC has not disputed or otherwise addressed these objections and, thus, DTSC’s claims of waiver by CCI and WCUS are misplaced. Thus, CCI and WCUS each contend that Chiquita’s January 12, 2026 response should not be construed as a waiver.

#### **V. Conclusion.**

Chiquita has been cooperative and transparent with its regulators and the public. It has spent hundreds of millions of dollars to implement state-of-the-art mitigation measures to address the reaction and comply with the ISE Order and orders and directives from other regulators. Chiquita will continue to implement its reaction mitigation efforts, and it remains willing to continue working with DTSC to discuss concerns and reach agreement on final RAWs.

Sincerely,



Jacob Duginski  
Megan Morgan  
Kaitlyn Shannon

*Counsel for Respondents*

cc: John Perkey, Chiquita Canyon  
Dylan Smith, Chiquita Canyon  
Robert Van Hyning, Civil & Environmental Consultants, Inc.  
Tim Crick, Department of Toxic Substances Control  
Peter Ruttan, Department of Toxic Substances Control  
Bridget Floyd, Department of Toxic Substances Control  
Diane Barclay, Department of Toxic Substances Control  
Christopher Kane, Department of Toxic Substances Control  
Johnathon Crook, Department of Toxic Substances Control  
Lisa Winebarger, Department of Toxic Substances Control  
Katherine Butler, Department of Toxic Substances Control  
David Sadwick, Department of Toxic Substances Control  
Wes Mindermann, CalRecycle  
Todd Thalhamer, CalRecycle  
Todd Sax, California Environmental Protection Agency  
Amy Miller, United States Environmental Protection Agency  
Laura Friedli, United States Environmental Protection Agency