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Comments of the Gila River Alliance for a Clean Environment and Greenaction for Health and Environmental Justice on Romic “Environmental” Technologies Corporation Southwest “Human Health Risk Assessment”

The Gila River Alliance for a Clean Environment and Greenaction for Health and Environmental Justice submit these comments on Romic’s “Human Health Risk Assessment” prepared by ENVIRON for the facility located at the Lone Butte Industrial Park on the Gila River Indian Community.

The Gila River Alliance for a Clean Environment is a grassroots tribal-member organization from the Gila River Indian Community that works to protect the health, environment and culture of our people.

Greenaction is a multiracial environmental health and justice organization that works with urban, rural, desert and Indigenous communities in campaigns for healthy communities and environmental justice, and our members include Gila River Indian Community tribal members.

The “Risk Assessment” is Totally Flawed and Romic Must Be Shut Down Now:

The facts are clear that the so-called “Risk Assessment” does not assess the true risks posed by the Romic facility, and the facility should not be allowed to continue operating until and unless the facility is proved to be safe to the satisfaction of the Gila River Indian Community. Our comments in this document will illustrate clearly the problems with the “Risk Assessment” and will show why permits must be denied and Romic must be closed immediately.

Romic has continued operations for decades without full permits, as violations continue and incidents such as the noxious odors that sickened dozens of people in December 2006 take place. This is an unacceptable situation that poses health, environmental and economic risks to the Gila River Indian Community and nearby community members and businesses.

“Risk Assessment” Ignores Chronic History and Pattern of Serious Violations and Problems at both Romic facilities:

As Romic’s long and chronic history of serious violations and problems at both the Romic Southwest facility at the Gila River Indian Community and their facility in East Palo Alto, California demonstrate, Romic’s “Risk Assessment” does not reflect the reality of the situation.

For example, the enforcement action taken by US EPA that resulted in the August 17, 2005 fine of \$67,888 against Romic Southwest was in response to years of problems going back to 2002, and included the following violations that were similar to those found by US EPA in years prior during other inspections:

- Failed to properly operate, inspect, monitor and maintain records for the air emission control device, the closed-vent system and the hazardous waste storage tanks;
- Failed to properly mark, monitor, inspect, calibrate and maintain records for equipment that contains or contacts hazardous waste;
- Stored ignitable wastes less than 50 feet from the property line and stored incompatible wastes next to each other;
- Failed to store hazardous waste in containers in good condition, and label and close hazardous waste containers;
- Failed to properly label waste fluorescent lamp tubes;
- Failed to determine if a container held hazardous waste;
- Failed to submit a revised application notifying the EPA of facility changes, and
- Failed to conduct inspections and maintain complete inspection logs.

We incorporate the August 15, 2005 US EPA Region IX Consent Agreement and Final Order containing the settlement with Romic as part of these comments.

The fact that many of the violations contained in this August 15, 2005 Consent Agreement are similar or identical to problems identified for years by US EPA inspectors (and by state officials in California) seems to indicate that Romic is either unwilling or incapable of compliance with the most basic permit requirements. ***We therefore request that US EPA incorporate all of your inspection reports for the Romic facility for the history of the facility into these comments – and into your evaluation of this “Risk Assessment” and your permit decision.*** EPA’s inspection reports will demonstrate that our critique of the “Risk Assessment” is correct.

The fact that a serious incident resulting from noxious emissions leaving the Romic facility and sickening dozens of people in the vicinity of Romic took place in December – and continued for days without the problem being remedied – further proves that the “Risk Assessment” is inaccurate and does not truly assess the risk from Romic. This will be discussed in more detail below.

The “Risk Assessment’s” failure to consider that Romic frequently failed to inspect and monitor equipment and maintain proper records results in gross underestimation of risk:

As was made clear in US EPA’s own inspections over the years, and in their enforcement action taken against Romic Southwest on August 17, 2005, Romic has often failed to inspect and monitor their operations or maintain proper records. Any emissions estimate and Risk

Assessment that does not consider these problems is seriously defective and cannot be relied upon.

The failure to properly operate or monitor equipment such as the air emissions control device, the closed-vent system and hazardous waste storage tanks, as was documented by US EPA's August 15, 2005 Consent Agreement, is extremely serious and the implications of these violations are essentially ignored in the "Risk Assessment." When a company fails to properly operate or monitor such equipment, the emissions at best are unknown and in fact can be much worse than estimated. The same is true of the failure to properly monitor, inspect and calibrate equipment that contains or contacts hazardous waste.

The "Risk Assessment's" failure to consider that Romic repeatedly has failed to properly and safely store hazardous wastes results in a gross underestimation of risk:

As US EPA's August 15, 2005 Consent Agreement and years of US EPA inspection reports clearly document, Romic has a serious and repeat chronic problem with improper hazardous waste storage. The Consent Agreement penalized Romic for storing ignitable wastes less than 50 feet from the property line and storing incompatible wastes next to each other.

EPA reports document that Romic repeatedly failed to store hazardous wastes in containers that were in good condition, and properly label or secure hazardous waste containers.

Improper storage of hazardous wastes can result in catastrophic incidents that can harm the health of workers and the community, and harm the environment. As this is a chronic problem at Romic, allowing Romic to continue operations is an invitation to disaster, and one that was essentially ignored in the so-called "Risk Assessment."

The major noxious odor incident in December 2006 at Romic that sickened dozens of people and continued for days proves that Romic's "Risk Assessment" Understates True Risks:

Although the incident in early to mid-December 2006 when noxious emissions from Romic left the facility and sickened dozens of nearby workers at the adjacent lumber company was terrible, there was one positive result: it proved without a doubt that the Romic facility poses an unacceptable health risk to the community.

The inadequacy and inaccuracy of the "Risk Assessment" ("RA") was made crystal clear when Romic released noxious emissions from their facility and sickened dozens of workers at the company next door, approximately one week prior to US EPA's public meetings in December on the "Risk Assessment." The noxious odors continued for over one week, and even continued after the source of the problem was supposedly found by Romic and the US EPA staff. Not only were the workers next door to Romic sickened by the Romic release, but Romic's own workers were forced to breathe the noxious fumes – including in apparently unventilated offices.

No where in Romic's document was there an analysis or prediction of the type of incident that in fact occurred in December.

- The “RA” failed to analyze a situation where noxious odors would sicken dozens of people.
- The “RA” failed to analyze a situation where noxious odors would persist for so long.
- The “RA” failed to analyze a situation where noxious odors would persist even after the source of the problem was allegedly identified and the problem allegedly remedied.
- The “RA” failed to analyze a situation where noxious odors would become embedded in the fencing of the facility, causing ongoing odors to persist.
- The “RA” failed to analyze a situation where noxious odors might contaminate the wood products of the adjacent lumber company.
- The “RA” failed to analyze a situation where Romic’s own workers would have to keep working in an enclosed office with little or no ventilation for many days despite the presence of sickening odors.

US EPA’s Lax Enforcement – including Considering Emissions of Noxious Odors that Sicken Dozens of People as “Not a Permit Violation” - is Unacceptable, Contributes to the Serious Risk from Romic, and Must be Evaluated as Part of a real Risk Assessment:

What is also alarming – and was never addressed in the “Risk Assessment” – is the fact that US EPA failed to penalize dangerous operations and violations at Romic for decades. Years of US EPA inspection reports document dangerous practices were found at Romic during almost every US EPA inspection, yet until the August 15, 2005 Consent Agreement not one of these problems were penalized with a fine.

Equally alarming is the fact that US EPA official Cheryl Nelson made the startling statement at the US EPA public meeting on December 13, 2006 in Chandler, Arizona that the noxious odor incident that continued for days and sickened dozens of people was not a permit violation. This statement by a US EPA official makes a mockery of US EPA’s position that its permits are health protective. *How can a permit be protective of health when EPA interprets that to mean that dozens of people can be sickened by noxious emissions without it constituting a violation?*

Lax enforcement of violations and improper interpretation of permit conditions by US EPA must be evaluated in a Risk Assessment, as lax enforcement creates a situation where violations and excess pollution will likely continue to occur.

Romic Violations Continue – Contradicting the claims in the “Risk Assessment” that Romic complies with permit conditions:

The fact that violations continue at Romic was documented during a tour taken by Greenaction, tribal members and a reporter for the Arizona Republic newspaper on December 13, 2006. We all witnessed several incidences of improper, dangerous and apparently illegal storage of hazardous wastes at the facility, despite the fact that these violations were out in the open, obvious to anyone, and occurred while US EPA inspectors and officials were at the site.

The apparent violations included:

- A hazardous waste container tilted dangerously as it was stored on top of other containers of hazardous waste, as well as several other containers also tilted when stored;

- Waste material clearly visible on the outside of a drum containing hazardous wastes;
- A severely dented drum containing hazardous waste.

Photographs of these apparent violations have been supplied by us to US EPA in a letter sent via email on December 20, 2006. We incorporate that letter and the photos of apparent violations into these comments.

In addition, the noxious odors were still overwhelming that day, despite the fact that the problem that caused the odors supposedly had been remedied by Romic.

The fact that Romic was improperly storing hazardous wastes out in the open, in plain view for anyone to see, even while US EPA inspectors were on the site and while they were having problems with noxious odors, and during a “Risk Assessment” comment period should be a wake up call and reality check: Romic must be closed down immediately.

Romic’s Problems at the Gila River Indian Community are Similar to Romic’s Violations at their facility in East Palo Alto, California – and this pattern of problems and violation should have been considered in a true Risk Assessment:

Romic has a dismal track record and history of violations and problems at the East Palo Alto, California facility, similar to the problems at the facility located on the Gila River Indian Community. The problems and long history of violations at both plants is a matter of public record.

A real Risk Assessment would have evaluated the fact that both Romic facilities have for years, including recently, had ongoing and similar problems that illustrate that Romic, for whatever reason, cannot consistently operate in compliance with permits. This reality must be part of a Risk Assessment, and clearly requires a Risk Assessment to conclude that Romic poses an unacceptable threat to public health and the environment.

For example, on April 6, 2005 the State of California Department of Toxic Substances Control (DTSC) filed a complaint seeking injunctive relief and penalties against Romic Environmental Technologies Corporation as owner of the problem-plagued facility in East Palo Alto, California and a rail terminal facility in Redwood City, California. This complaint was settled with a fine of \$849,500 and a Stipulation for Judgment, approved by the San Mateo County Superior Court, and by a Consent Order. We attach the Stipulation for Judgement and Order as part of these comments.

DTSC’s complaint alleged numerous and major violations of the Hazardous Waste Control Law’s requirements for storage, handling, acceptance and treatment of hazardous waste, violations of DTSC’s regulations, and violations of Romic’s permits.

The DTSC settlement with Romic stems from violations found by DTSC inspectors between 1999 and 2004. Violations found by DTSC at the East Palo Alto facility include:

- 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 wastes without separation in 2001 and 2003;
- Treating hazardous wastes in unauthorized units in 2001, 2002, and 2003;
- Exceeding capacity of hazardous waste tanks in 1999, 2000, and 2001;
- Modifying equipment with prior authorization from DTSC; and
- Failing to comply with DTSC permit conditions.

Violations found by DTSC at Romic's Redwood City rail transfer facility included:

- Failing to comply with conditions of their permit in 2002 and 2004;
- Failing to maintain a secondary containment unit in 2004; and
- Failing to conduct regular inspections at the facility's secondary containment unit in 2004.

These violations at Romic's California facility punished by the State DTSC in 2005 are quite similar to prior violations at Romic in California and also are very similar to the problems at the Romic facility at the Gila River Indian Community.

Despite the enforcement action taken by the DTSC against Romic in 2005, problems continue at the Romic California facility in East Palo Alto, prompting further enforcement action.

For example, on June 5, 2006, approximately 4000 gallons of used mixed solvents began reacting inside a Romic tanker and released a fine mist that settled over part of the facility, portions of a nearby road and areas, and on wetlands. The contents included toxic materials.

As a result of this new incident, further enforcement action was taken by the DTSC against Romic. On June 15, 2006 the California Department of Toxic Substances Control issued an enforcement order that did not provide Romic with an opportunity for appeal. This enforcement order **specifically cites Romic "for failure to operate the facility in a manner 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."** A copy of the DTSC press release announcing this enforcement action is attached and incorporated into our comments.

The "Risk Assessment" for the GRIC facility basically ignores the history of violations as something that happened in the past, when in fact as the recent problems and violations in both California and Arizona, and the recent serious odor incidents and improper storage of hazardous wastes at Gila River demonstrate these problems in fact continue at the Romic facility at the Lone Butte Industrial Park. It is clear that enforcement action that does not close the Romic facility merely allows Romic to keep operating and keep having problems that threaten public health and the environment. This fact must be included in any Risk Assessment.

"Risk Assessment" Fails to Properly Describe All Types of Hazardous Wastes at the Site:

For example, the Executive Summary states that "The main operations at the Site consist of recycling waste solvents to produce reusable solvents...." To more properly describe the facility, the fact that Romic accepts and stores hazardous wastes including cyanide should have been specifically mentioned and addressed in the Risk Assessment. During our recent tour of Romic we saw a drum containing cyanide waste, and this fact shocked community members who had no idea this type of hazardous waste was stored at Romic.

“Risk Assessment” Fatally Flawed Due to Failure to Evaluate Risk from Cumulative Emissions from Normal and Upset Conditions, Accidents, Fires, etc:

As was confirmed by US EPA officials at the December public meetings, Romic’s “Risk Assessment” failed to evaluate the cumulative impacts from the combined emissions resulting from “normal” and upset or similar “non-normal” conditions.

For example, the “Risk Assessment” document on page 2-2 refers only to “Potential sources of emissions associated with normal operations...”

This is a serious flaw in the evaluation done by Romic’s consultant as they essentially evaluated a non-existent facility. The reality, as the December noxious odor incidents make clear, is that emissions from other than “normal” operations do in fact occur at Romic and must be included in risk evaluations.

“Risk Assessment” Incorrectly evaluated only inhalation exposure routes:

The document states on page ES-2 “Since emissions include only volatile chemicals, the only relevant exposure route would be inhalation.” This is incorrect, as workers in particular could be exposed to direct physical contact with chemicals from Romic – but residents and other people could also come into direct contact with chemicals from Romic. This is a huge flaw in the RA.

The “RA” also makes the unfounded claim on the same page that “...deposition of volatile chemicals will be insignificant...” This claim was proved wrong by the December odor incidents, which clearly resulted in significant deposition of chemicals.

The claim on page ES-3 of the RA that “The estimated risks in this assessment are based primarily on a series of conservative assumptions...” is incorrect, for many of the reasons set forth in our comments including the failure to evaluate chronic violations, accidents, fires, noxious odor incidents, cumulative impacts and other issues.

“Risk Assessment” Failed to Consider Cumulative Health Impacts and Existing Body Burden:

The “RA” failed to consider the fact that workers and nearby residents and others already have lots of toxic chemicals and metals in their bodies from living in an industrialized, polluted environment. The average person in the US already has a body with at least dozens of different chemicals, and emissions from Romic must be added to the existing body burden as those emissions do not happen in a vacuum. To truly assess the impacts of Romic’s emissions, the realities of the existing human body – contaminated with chemicals – must be evaluated, and the “RA’s” failure to acknowledge this reality results in a misleading assessment of risk.

Romic’s “Risk Assessment” Admits a High Acute Health Risk – and Seriously Underestimated the True Risk as the recent odor incident that sickened dozens proved:

The RA admits on page ES-5 that “The maximum HI...would be 1.6, just slightly **above** the noncancer target level....Based on the conservativeness in this evaluation, a HI of greater than one is unlikely to occur at the Site.” Not only is this high, and unacceptable, but their claim that

a HI of greater than one is unlikely to occur was proven wrong in December with the serious and long noxious odor incident that sickened dozens of people.

Occupational Risks Not Accurately Evaluated:

As we witnessed first hand on December 13, 2006, Romic employees were working inside an office while a terrible, strong and seriously noxious odor was present and had been present for days. To the best of our knowledge, there was no ventilation and the stench was overwhelming.

“Risk Assessment” looked at “Typical” and Generally Ignored “not typical” incidents:

The document repeatedly uses the word “typically” to the exclusion of all situations that could and do occur. For example, a review of page 5-2 (last paragraph) has at least four references to typically, but this is not a legitimate assessment of all possible risks.

“Risk Assessment” Improperly Excluded Mercury from Evaluation:

The document on page 5-2 states that mercury is not included in the facility’s general wastestreams – even though it is part of the facility’s waste stream. Mercury is excluded by the RA on the questionable basis that it is “typically” received as part of lab pack materials or in salt form. The RA claims that no process at the facility would generate mercury fumes or dust – apparently the contractors writing this document never heard of fires or explosions or spills.

Risk from Drum “Mucking” Underestimated:

The RA states that Romic’s hazardous waste drums are “typically” scraped by hand (page 5-4). The RA states that “Material in the drum is typically solid or semi-solid and unlikely to aerosolize or evaporate during this process. Hence, no quantification of emissions from this source was conducted.”

What if the material isn’t solid or semi-solid? Typical does not mean it always is solid or semi-solid, otherwise the RA would have said so. By failing to quantify potential emissions from all scenarios, not just supposedly “typical” ones, the RA is defective.

The analysis of Rail Loading Ignores Romic’s problems at Rail Loading:

As the State of California’s recent enforcement action against Romic documented, Romic has had problems and violations with their rail loading and this should be considered in a real risk assessment.

Evaluation of Waste Paint Consolidation is Wrong:

The firm doing the RA made a big mistake in this section (5.3.7) on page 5-6. They claim that 400 gallons of waste paint are collected per day or approximately 4,125 gallons per month. However, 400 gallons per day equals approximately 12,000 per month, not 4,125 gallons. This section is illustrative of the sloppy nature of the entire RA.

It is wrong to consider only “recent” history of accidental releases:

The entire and chronic history of problems and accidental releases at both Romic facilities should have been evaluated as they indicate a chronic and ongoing problem.

There are several references to Romic conducting inspections as a way to avoid problems at the facility. However, this ignores the fact that Romic has been cited and penalized for lack of proper inspections and monitoring more than once.

Evaluation of Explosions is Flawed:

The “Risk Assessment’s” discussion of explosions in Appendix D, page 4 (section 2.3) is defective. It claims that “Because there are no explosive materials present at the facility...the likelihood of an explosion occurring at the facility is very small.” As years of US EPA inspections and US EPA and State of California DTSC enforcement actions document, Romic has been guilty on several occasions of the improper storage of incompatible wastes near each other. The reason that incompatible wastes should not be stored next to each other is to avoid explosions. The RA clearly ignores this history with Romic repeatedly storing incompatible wastes near each other.

Claim About Proper Storage Is Contradicted by Romic’s Track Record:

The “Risk Assessment’s” claim that “Containerized wastes are stored in properly closed DOT shipping containers” and “Incompatible materials are segregated by area...” are contradicted by US EPA inspection reports and the recent US EPA enforcement action.

Risk from Spills Underestimated:

The RA admits that there were 39 spills during the two-year period of 2004-2005, and that three of the spills were large spills. This is a large amount of spills. In addition, during a tour of the facility on December 13th, we witnessed waste material spilled on the outside of a hazardous waste drum, and photos were provided to the US EPA by us on December 20, 2006.

Risk from Fires and “Other Releases Off-Site” Underestimated:

The RA makes the unfounded claim that “No environmental or health impact resulted...” from a fire on June 2004 (Appendix D, section 3.5), as Romic officials admitted during the December public meetings that no monitoring was done to measure the emissions from that fire.

The RA also claims in Appendix D, section 3.6 that releases from two other incidents caused by unintended reactions where vapors drifted from the facility “did not cause any measurable harm to human health or the environment.” However, no measurement took place at all, so this claim is without foundation in fact.

Such baseless claims in the RA illustrate that it is more like a public relations document, not a true assessment of any and all risks that the Romic facility can pose.

Conclusion: The Romic facility must be closed, immediately.

We urge the Gila River Indian Community and the US EPA to shut the Romic facility immediately, before any more “accidents” that sicken dozens of people can occur again. The “Risk Assessment” is clearly flawed and describes a facility that bears little or no relationship to the Romic Southwest facility at the Lone Butte Industrial Park at the Gila River Indian Community. It describes alleged risks to people that do not exist – people with no toxics in their bodies. It describes a non-existent reality where Romic always complies with their permits and the law, always inspects their equipment, where no one gets sick, and where things that are “typical” reflect conditions 100% of the time.

The Romic facility must be closed, immediately.

As the December incident and years of problems prove, the Romic facility cannot operate safely. If Romic wants to operate on the Gila River Indian Community, they must close, followed by a thorough and public environmental review, complete with an Environmental Impact Statement, public hearings and with all relevant information being shared by US EPA with tribal officials and tribal members that leads to a permit decision. Only a full and transparent permit process will allow the Gila River Indian Community to truly exercise their sovereignty and make a fully-informed decision that is protective of health, environment, economic integrity and culture of the Gila River Indian Community. Unless and until Romic can be proven safe, it must be shut down.

Respectfully submitted,

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