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### RESPONSE TO COMMENTS

#### D/K DIXON, DIXON, CALIFORNIA STANDARDIZED HAZARDOUS WASTE FACILITY STORAGE PERMIT

November 7, 2008

#### BACKGROUND

D/K Dixon located at 7300 Chevron Way, Dixon, California, 95620 in the Solano County. In 1978, Solano County issued a "land use permit" to BC Stocking to allow operations as a wholesale distributorship of petroleum products, owned by BC Stocking, Inc., of Vacaville, CA. This distributorship included the operation of underground storage tanks (UST) dispensing petroleum fuel products. In 1991, the County issued another "land use permit" which expanded the operations to include a card lock diesel fuel station, a drum dock, and additional USTs. In December 1993, BC Stocking was granted authorization by the Department of Toxic Substances Control (DTSC) to collect, transfer, and store used oil. That authorization was limited to the transfer and storage of used oil into two 10,000-gallon capacity tanks for a maximum capacity of 20,000 gallons of used oil. Subsequently, BC Stocking submitted a Standardized Permit application to DTSC to increase the Facility's capacity to 50,000 gallons of used oil, oily wastewater, and used antifreeze.

In 1998 during closure and removal of the various USTs on site, soil and groundwater contamination were discovered. Subsurface investigations and groundwater monitoring is ongoing. In January of 2004, the site and used oil operations were sold to Advanced Environmental, Inc. of Fontana California. The site was renamed D/K Dixon and continues used oil operations under the interim authorization of the DTSC.

D/K Dixon submitted a new Standardized Hazardous Waste Permit, Series B application DTSC reviewed the permit application and determined that it was technically complete on March 27, 2008. DTSC prepared a draft Permit and a California Environmental Quality Act (CEQA) Negative Declaration. On March 28, 2008 DTSC informed the public of a 45-day public comment period on the draft permit. That comment period ran from March 28, 2008 to May 12, 2008. A public meeting was held on April 29, 2008 at the Veterans Hall, 231 North First Street in Dixon at 6:30 pm. The public was informed of the public comment period by a display advertisement in the Dixon Tribune on March 28, 1008 and

radio advertisements aired on KGO 580 AM and KLOK 1170 AM. In addition, copies of a fact sheet were mailed to the facility mailing list .

DTSC received two set of comments during the public comment period. These comments were from Ms. Rosemary Domino and Robert Hoffman, representing the facility, D/K Dixon, via electronic mail. There where no comments received during the public meeting held on April 29, 2008. All comments received during the public comment period are responded to in this Response To Comments (RTC) document. A copy of this RTC will be provided to all commenters. A copy will also be placed in information repositories for this project.

**Response to Comments from Rosemary Domino and Robert Hoffman  
received May 12, 2008**

**Comment #1**

Part II., Condition E. (Description of Facility Operations)

This section states that, aside from the six storage tanks, the facility “also has one container storage area for the storage of containers of oily solids such as oily absorbent, used Personnel Protective Equipment (“PPE”), and oily debris that are generated as a result of daily routine operations, housekeeping, and maintenance. The maximum capacity of the container storage area is four 55-gallon drums (220 gallons).”

D/K Dixon does not require permitted storage capacity for hazardous wastes generated on-site from the management of off-site waste. Absorbent, PPE and debris that are generated as a result of daily routine operations, housekeeping and maintenance are on-site generated hazardous wastes that may be accumulated without a permit before being sent offsite. California Code of Regulations, title 22, section 66262.10(g) makes it clear that hazardous waste generated by a facility is on-site generated waste which is eligible for management pursuant to the generator accumulation requirements of section 66262.34. Specifically, section 66262.10(g) states:

An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility shall comply with the generator standards established in this chapter. The provisions of section 66262.34 shall be applicable to on-site accumulation of hazardous waste by generators. Therefore, the provisions of section 66262.34 shall apply only to owners and operators who are shipping hazardous waste which they generated at that facility.

Further, the U.S. Environmental Protection Agency’s Office of Solid Waste has also made it clear in three different interpretive RCRA policy memoranda that hazardous wastes generated as a result of management of hazardous wastes received from offsite are new hazardous wastes and the facility is considered the generator of those hazardous wastes. (see Attachment 1)

Pursuant to California Code of Regulations, title 22, section 66262.34(a), generators may accumulate hazardous waste in containers without a permit or interim status provided they comply with the applicable requirements of Articles 9, 27, 28 and 28.5 of Chapter 15. Article 9 of Chapter 15 contains the requirements for the storage of hazardous waste containers at an interim status

facility. The container storage requirements for interim status facilities do not require that containers be provided with secondary containment.

D/K Dixon therefore requests that DTSC remove reference to the need for permitted storage capacity for four 55-gallon drums from the Draft Permit.

**Response to Comment #1:**

*DTSC disagrees with the comment and will not remove the reference to the need for permitted storage capacity for four 55-gallons drums from the Draft Permit for the following reasons.*

*D/K Dixon states that they do not need permitted storage capacity for hazardous waste generated onsite from the management of offsite waste. D/K Dixon claims that absorbent, PPE and debris that are generated as a result of daily routine operations, housekeeping, and maintenance are onsite generated hazardous wastes. DTSC agrees that PPE and rags used for routine operations are onsite generated waste and D/K Dixon does not need a permit to store those wastes. However, DTSC disagrees with D/K Dixon's claim that absorbent and oily debris are onsite generated waste. Absorbent contaminated with used oil is usually generated when used oil is spilled and the absorbent is placed on the used oil to clean it up. The contaminated absorbent is considered to be an offsite waste because it is just a mixture of the original offsite waste and absorbent material. It is not a new waste stream. In fact, any waste generated from clean up of a spilled offsite hazardous waste is still considered to be an offsite waste.*

*The Standardized Permit Application states that oily debris may consist of filter basket strainer debris, tank bottoms, and dirt contaminated with used oil. These wastes are considered to be part of the used oil waste stream originally accepted by the facility. For example, used oil is accepted by D/K Dixon in tanker trucks. The used oil is then pumped into the storage tank where it passes through a filter to remove some oily solids. D/K Dixon, upon acceptance of the used oil, does not make any distinction between the used oil and oily solids in the used oil. It is considered a single wastestream. Therefore, any filter basket strainer debris is considered to be an offsite waste. This same reasoning would also apply to tank bottoms.*

*Additionally, D/K Dixon cites three different interpretive RCRA policy memoranda developed by the U.S. Environmental Protection Agency's Office of Solid Waste that hazardous wastes generated as a result of management of hazardous wastes received from off-site are new hazardous wastes and the facility is considered the generator of those hazardous wastes. DTSC has examined the documents cited by D/K Dixon and found them to be irrelevant in this situation. Each of the policy memoranda cited dealt with whether residues resulting from the treatment of hazardous waste are considered to be a new waste and as*

*such, the TSDf would be considered the generator of the waste. These policy memoranda are not relevant to D/K Dixon because no treatment is conducted and no residue is generated. As stated above, DTSC considers the oily debris resulting from the management of used oil to be the same wastestream as used oil.*

*In addition, DTSC has the authority to make its own determination on the classification as cited in one of the RCRA policy memoranda presented by D/K Dixon. The August 30, 1991 letter from Ms. Sylvia K. Lowrance, Director of the Office of Solid Waste states that "States with authorized RCRA programs may impose more stringent requirements. Such States also have the authority to make regulatory determinations about the materials which constitute hazardous wastes under their programs." Clearly, DTSC is within its rights to make its own determination about the status of the oily debris.*

*In summary, the permitted capacity of 440 gallons for the eight 55-gallons will remain in the Permit. Waste generated from routine maintenance operations such as rags and personal protective equipment can be treated as onsite generated waste and must be managed in accordance with California Code of Regulations, title 22, chapter 12. Other waste resulting from the management of used oil such as filter basket strainer debris and tank bottoms are considered to be offsite waste and must be managed accordingly.*

## **Comment #2**

Part III., Condition D. (Annual Hazardous Waste Reduction and Minimization Certification)

This condition states: "[t]he Permittee shall certify annually that it has a hazardous waste reduction and minimization program and method in place and shall keep the annual certification as part of its Operation Record in accordance with California Code of Regulations, title 22, section 66264.73(b)(9)."

D/K Dixon assumes that this condition is requiring compliance with the Hazardous Waste Source Reduction & Management Review Act of 1989, also known as SB 14 (California Health and Safety Code section 25244). The hazardous wastes generated by D/K Dixon are a direct result of the management of hazardous wastes which are received from offsite for storage and transfer to permitted recycling facilities. These onsite generated hazardous wastes (i.e. oily absorbent, used Personnel Protective Equipment ("PPE"), oily debris and rinsewaters) are primarily housekeeping and maintenance wastes resulting from activities such as the interior cleaning of hazardous waste storage tanks and maintenance/cleaning of equipment used in the storage of hazardous waste, etc. California Health and Safety Code section 25244.15(d)(3) states, "...this article does not apply to any generator whose hazardous waste generating activity

consists solely of receiving offsite hazardous wastes and generating residuals from the processing of those hazardous wastes.” Due to the fact that the hazardous wastes generated by D/K Dixon are a direct result of managing hazardous wastes received from offsite, they are exempt from the requirements of SB 14, including the requirement to annually certify that they have a hazardous waste reduction and minimization program. Therefore D/K Dixon requests that Part III., Condition D. be removed from the Draft Permit.

**Response to Comment #2:**

*DTSC does not agree that the oily debris is an onsite generated waste (See Response to Comment 1); however, DTSC does agree with the premise of the comment regarding the hazardous waste management activities and other wastes being exempted from SB 14 requirements. Therefore, DTSC will delete this condition from the Permit.*

**Comment #3**

Part IV. (Storage Area 1)

Physical Description and Table 1

In the second paragraph of the Physical Description section it states: “Storage Area 1 consists of 5 storage tanks and four 55-gallon drums used to store non-RCRA hazardous waste. Tanks 1, 2 and 3 store a maximum of 10,000 gallons of hazardous waste; Tank 4 stores a maximum of 9,500 gallons of hazardous waste; Tank 5 stores a maximum of 7,500 gallons of hazardous waste. In addition to the 5 tanks, Storage Area 1 allows for the storage of no more than four 55-gallon drums.”

As discussed above in our comments concerning Part II, Condition E., unless they contain liquid hazardous wastes, the four 55-gallon drums are not required to be placed into permitted secondary containment due to the fact that the drums are for the accumulation of hazardous waste generated on-site at D/K Dixon. For this reason, reference to the four 55-gallon drums must be removed from the physical description of Storage Area 1 and the total volume of the four drums (220 gallons) should not be counted against the maximum permitted storage capacity for the facility of 50,000 gallons.

Table 1 of the Draft Permit (Unit Maximum Permitted Capacity and Waste Stream Storage) states that Tank 4 may only contain a maximum of 9,500 gallons of hazardous waste. Table 1 also includes the total volume of the four 55-gallon drums (220 gallons) within the maximum permitted storage capacity for the facility. D/K Dixon is a “Series C” Standardized Permit facility. California Health and Safety Code section 25201.6(a)(3)(C) states, that for a Series C

facility, “[t]he total facility storage design capacity does not exceed 50,000 gallons for liquid hazardous waste.” The total capacity of all six storage tanks at D/K Dixon is 50,000 gallons, and this should be the maximum permitted capacity for the facility. As discussed above, there is no need for the volume of four 55-gallon drums (220 gallons) to be included in the maximum permitted storage capacity for the facility as any hazardous waste in those drums is generated on-site by D/K Dixon. The actual maximum capacity of Tank 4 is 10,000 gallons and there is no need to limit its capacity to 9,500 gallons. When the volume of the four 55-gallon drums is removed from the calculation for the maximum permitted capacity, each of the six tanks may be filled to its actual maximum capacity and the maximum permitted storage capacity of the facility will be 50,000 gallons. Therefore, D/K Dixon requests that DTSC revise Table 1 by: 1) indicating that Tank 4 has a maximum permitted capacity of 10,000 gallons, and 2) removing the volume of the four 55-gallon drums from the maximum permitted capacity.

**Response to Comment #3:**

*D/K Dixon is correct in that stating that unless the drums contain liquids, the drums are not required to be placed into the permitted secondary containment unit. However, eight drums of offsite waste will be counted toward the total capacity of the facility for the reason stated in Response to Comment 1 above. In addition, D/K Dixon may store as many drums of onsite generated waste as they wish provided those drum of onsite hazardous waste are managed in accordance with California Code of Regulations, title 22, chapter 12.*

*The Standardized Permit Application and the Permit provide for storage of four drums of offsite hazardous waste. Since it appears that the drums may contain both solid waste (wastes that pass the Paint Filter Test) and liquid waste (wastes that does not pass the Paint Filter Test), D/K Dixon must clearly state where these wastes will be stored. Therefore, DTSC will include the following condition in the Permit:*

*“Within 30 days after the effective date of this Permit, the Permittee shall submit to DTSC a revised Facility Plot Plan clearly showing where the containers of offsite hazardous waste are to be stored. The Permittee shall also clearly mark the area(s) at the Facility as the “Drum Storage Area” within 30 days of the effective date of this Permit. The marking shall be made in either white or yellow paint.”*

*D/K Dixon is correct that there is no need to limit the capacity of Tank 4 to 9,500 gallons. The design capacity of Tank 4 is 10,000 gallons as stated in the Standardized Permit Application. DTSC erred in imposing a total Facility capacity limit of 49,720 gallons. The Series of the Standardized Hazardous Waste Facility Permit is determined by the design capacity and not any limits imposed by DTSC. As such, DTSC will revise the capacity of Tank 4 in Table 1*

*to be 10,000 gallons as requested. DTSC will not remove the eight 55-gallon drums from Table 1 for the reasons stated in Response to Comments 1.*

*With the revision in capacity, D/K Dixon has a design capacity of 50,440 gallons and the Permit has been revised to be a Series B, Standardized Hazardous Waste Facility Permit. DTSC will also change all the necessary documentation and fees applicable for a Series B Standardized Hazardous Waste Facility Permit pursuant to California Health & Safety Code section 25201.6(a)(2)(C). Therefore, DTSC has included the following condition in the Permit.*

*“Within 30 days after the effective date of this Permit, the Permittee shall submit to DTSC a revised Form 1093A which shows the corrected units and capacity at the Facility.”*

#### **Comment #4**

Part V., Condition F.

This condition states: “[a]t no time shall the volume of off-site hazardous waste received at the Facility (for management within the authorized units) exceed 49,720 gallons of hazardous waste.”

As discussed above in our comments concerning Part II., Condition E., and Part IV, Physical Description and Table 1, the maximum permitted storage capacity of the facility is 50,000 gallons. Therefore, D/K Dixon requests that this condition be revised to state:

“At no time shall the volume of off-site hazardous waste received at the Facility (for management within the authorized units) exceed 50,000 gallons of hazardous waste.”

#### **Response to Comment #4:**

*DTSC erred in limiting the total Facility capacity to 49,720 gallons (See Response to Comments 3). Therefore, DTSC will change the condition to read:*

*“At no time shall the volume of off site hazardous waste received at the Facility (for management within the authorized units) exceed 50,440 gallons of hazardous waste.*

#### **Comment #5**

The last sentence of this special condition states: “[t]he Permittee shall analyze outgoing loads of used oil for PCBs in accordance with Special Condition N of this permit. In a subsequent section of this letter, D/K Dixon provides detailed

comments regarding why the PCB testing requirements of Part V., Condition N. are not workable. For the reasons stated in those comments, DTSC must remove the last sentence of Part V., Condition L.5.

**Response to Comment #5:**

*DTSC agrees that this condition would require the PCB testing of each outgoing load of used oil. This was not DTSC's intention and conflicts with the PCB testing conditions in Condition V.N. DTSC further realizes that this condition would limit the sampling of the trucks to the using a coliwasa when other sampling equipment is acceptable. Therefore, the last sentence of condition V.L.5 has been deleted and condition V.L.5 has been revised to read as follows:*

*"One representative composite sample shall be obtained per truck load, analyzed prior to receipt (except for PCB testing in used oil), and retained. Incoming shipments of wastes in drums shall be sampled in accordance with the drum sampling frequency specified in Section III of the Standardized Permit Application."*

**Comment #6**

This condition states "[t]he Permittee shall log the results of all tests performed and the documents shall be retained for at least three (3) years at the facility for inspection." D/K Dixon requests clarification of what is meant by the term "log." D/K Dixon records the laboratory results on the receiving assessment record sheet for a particular shipment of waste received. This receiving assessment record sheet, with laboratory results attached, as well as the manifest(s) used for the particular shipment, becomes part of the operating record for the facility, as required by California Code of Regulations, title 22, section 66264.73. The use of the term "log" is unclear and accordingly D/K Dixon requests that this condition be revised to state:

"The Permittee shall maintain written results of all tests performed in the facility operating record, and the documents shall be retained for at least three (3) years at the facility for inspection."

**Response to Comment #6:**

*The term "operating log" can be used interchangeably with "operating record." For clarification, Condition V.L.6 has been revised to read as follows:*

*"The Permittee shall maintain written results of all tests performed as part of the facility's operating record and the documents shall be retained at the Facility until closure of the Facility."*

## **Comment #7**

Part V., Condition M.2.c.(1)(A)

This condition states: “[t]he Permittee may rebut the rebuttable presumption pursuant to California Code of Regulations, title 22, section 66279.10(b), (b)(1) and (2) only through analytical testing in accordance with the test methods specified in California Code of Regulations, title 22, section 66279.90(b) or by complying with conditions M.2.c.(1)(B) through (G) below, which are the only other means of demonstrating that the used oil does not contain halogenated hazardous waste for purposes of California Code of Regulations, title 22, section 66279.10(b), (b)(1) and (2) and this Permit.”

California Code of Regulations, title 22, section 66279.90(b) specifies four test methods that may be used to test used oil for halogens: Method 8010B, Method 8021A, Method 8240B and Method 8260B. EPA SW-846 test methods are often updated and provided with updated nomenclature to indicate a new and approved version of the same test method. However, California Code of Regulations, title 22, section 66279.90(b) is not often revised to list the approved updated versions of the test methods listed in that section. For example, EPA has recently adopted test method 8021B to test used oil for halogens. EPA test method 8021B is an updated and approved version of EPA test method 8021A. While California Code of Regulations, title 22, section 66279.90(b) does not specifically list EPA test method 8021B, its use should be allowed by DTSC due to the fact that it is simply an updated and approved version of EPA test method 8021A. Therefore, D/K Dixon requests that this condition be revised to state:

“[t]he Permittee may rebut the rebuttable presumption pursuant to California Code of Regulations, title 22, section 66279.10(b), (b)(1) and (2) only through analytical testing in accordance with the test methods specified in California Code of Regulations, title 22, section 66279.90(b), including updated and approved versions of the test methods specified in section 66279.90(b) which have been approved by EPA, or by complying with conditions M.2.c.(1)(B) through (G) below, which are the only other means of demonstrating that the used oil does not contain halogenated hazardous waste for purposes of California Code of Regulations, title 22, section 66279.10(b), (b)(1) and (2) and this Permit.”

## **Response to Comment #7:**

*California Code of Regulations, title 22, section 66279.90(b) does not list updated versions of the specified tests or Method 8021B as an acceptable test method. Section 66279.90(b) allows only the four (4) test methods listed in that section to be used to rebut the rebuttable presumption. If and when California Code of Regulations, title 22, section 66279.90(b) is amended to include an expanded*

*list of acceptable tests, Condition M.2.c.(1)(A) as currently drafted will allow the Permittee to use those new tests. Therefore, no change will be made to this condition.*

### **Comment 8**

This condition states: “[t]he Permittee shall obtain from the transporter a copy the Generator’s Waste Profile Worksheet (GWPW), attached to the manifest.” D/K Dixon will not rebut the presumption regarding high halides unless the generator provides analytical results prepared by a laboratory certified in accordance with the Environmental Laboratory Accreditation Program by using the test methods specified in California Code of Regulations, title 22, section 66279.90(b). Thus, the permit condition should require that the analytical results used to rebut the presumption be attached to the manifest.

In addition, the GWPW and the analytical results used to rebut the presumption are not attached to the manifest. Those documents may accompany the load or precede the receipt of the load. Thus, the reference to “attached to the manifest” must be removed. These documents may also be provided by the generator. Thus, a reference to the generator must be included. D/K Dixon requests that this condition be revised to state:

“The Permittee shall obtain from the generator or transporter a copy of the Generator’s Waste Profile Worksheet (GWPW) and the analytical results for the halogen content used to rebut the presumption.”

Response to Comment #8:

*The Permit is already providing flexibility by allowing the Permittee to rely on testing conducted by others rather than requiring the Permittee to test the suspected load themselves. Therefore, DTSC needs assurance that the alternative more flexible approach provided in the Permit be as dependable as possible. If the transporter brings documentation (including analytical results) from the generator that accompanies the load and the manifest, then there will be a guarantee that the Permittee will be informed whether the suspected load does or does not have greater than or equal to 1000 ppm halogens. If the Permittee is allowed to rely solely on documentation from the generator that may arrive prior to the load, there is no guarantee that the Permittee’s technician that receives the load will be able to check the files for that particular generator prior to accepting the load and verify the halogen content of the suspected load. The condition’s requirement that the documentation and analytical results be obtained from the transporter at the time of delivery will provide that certainty.*

*Therefore, Condition M.2.c.(1)(B) has been revised to read as follows:*

*“The Permittee shall obtain from the transporter, at the time of delivery, a copy of the Generator’s Waste Profile Worksheet (GWPW) and the analytical results for the halogen content used to rebut the presumption;”*

### **Comment #9**

Part V., Condition M.2.c.(1)(C)

This condition states: “[t]he Permittee shall review the GWPW document and confirm in the operating log that: i) the waste is less than 365 days old, ii) the analysis is based on a representative sample of the waste; and iii) the sample was analyzed by a laboratory certified in accordance with Health and Safety Code section 25198 by using the test methods specified in California Code of Regulations, title 22, section 66279.90(b).”

First, D/K Dixon is confused by the requirement to confirm in the operating log that the waste is less than 365 days old. There is no regulatory requirement in the California Health and Safety Code or the California Code of Regulations, title 22, which requires that a receiving facility must verify that a hazardous waste being accepted is less than 365 days old. Therefore, D/K Dixon requests that DTSC delete the requirement that it must confirm in the operating log that the waste is less than 365 days old.

Second, D/K Dixon objects to the requirements that they must confirm that the GWPW analysis was based on a representative sample of the waste. D/K Dixon has no means of confirming that the generator’s waste analysis was based on a representative sample of the waste, and should not be required to do so. D/K Dixon cannot force the generators to properly comply with the waste identification requirements of California Code of Regulations, title 22, section 66262.11. Only DTSC and the Certified Unified Program Agency can enforce the regulatory requirements for generators. D/K Dixon must rely on the generator’s legal obligation to properly comply with the waste identification requirements. The waste identification requirements of California Code of Regulations, title 22, section 66262.11(b)(1) require that the waste is tested “according to the methods set forth in article 3 of chapter 11 of this division...” Article 3 of chapter 11 requires that generators follow the testing methods in the U.S. Environmental Protection Agency’s “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.” Each method contained in this manual describes the type of sample which is required to properly run the test method. Therefore, this requirement to confirm that the GWPW analysis was based on a representative sample of the waste must be removed.

Third, the scope of the requirement for the analytical results to be prepared by a laboratory certified in accordance with the Environmental Laboratory

Accreditation Program (“ELAP”) is overbroad. The only analytical results that must be prepared by a laboratory certified in accordance with ELAP are the analytical results used to rebut the presumption. Therefore, the scope of this requirement must be modified.

D/K Dixon requests that this condition be revised to state:

“The Permittee shall review the GWPW document and confirm that the halogen content specified on the analytical result used to rebut the presumption was prepared by a laboratory certified in accordance with the Environmental Laboratory Accreditation Program by using the test methods specified in California Code of Regulations, title 22, section 66279.90(b).”

#### **Response to Comment #9:**

*DTSC acknowledges there was a typographical error in Condition M.2.c.(1)(C)i. Condition M.2.c.(1)(C)i should have read: “i) the GWPW is less than 365 days old” rather than “the waste is less than 365 days old.” This error has been corrected.*

*DTSC does not intend “confirm” to mean that the Facility personnel have to retrieve and review documentation from the operation log prior to accepting the waste. Instead, the term “confirm in the operating log” means to “enter or document” in the operating log or operating record after the waste is accepted. As stated in Response to Comment 6, the term “operating log” and “operating record” can be used interchangeably.*

*D/K Dixon’s request to delete the requirement that the Permittee confirms that the generator’s waste analysis was based on a representative sample of the waste is denied because D/K Dixon’s assertion that it is not possible to comply with the requirement is not accurate and deleting the requirement would be inconsistent with the Facility’s Waste Analysis Plan (WAP). Section III.B of the Standardized Permit Application for the Facility states “A signed profile and a representative sample may be provided by the generator prior to the load arriving at the D/K Dixon facility for preapproval or more commonly a signed profile may accompany the transporter and a sample may be taken from a truck that has arrived at the D/K Dixon facility but has not yet been pre-approved.” Also in Section III.B, “As an alternative to providing a representative sample to D/K Dixon for analysis in the D/K Dixon lab, the generator may provide the representative sample to an outside state certified lab and attach the lab results to the profile.” These statements indicate the condition as currently drafted can be implemented and is consistent with the Facility’s WAP.*

*D/K Dixon is correct that the only analytical results that must be prepared by a laboratory certified in accordance with ELAP are those results used to rebut the rebuttable presumption. This condition has been revised to clarify that the certification requirement only applies when analyticals will be used to rebut the presumption.*

*Therefore, Condition M.2.c.(1)(C) of Part V has been revised to read as follows:*

*“The Permittee shall review this documentation prior to accepting the waste and subsequently shall enter into the operating record evidence that the Permittee reviewed the documentation and verified that a) the GWPW is less than 365 days old; b) is based on a representative sample of the waste; and c) data used to rebut the presumption was analyzed by a laboratory certified in accordance with the Environmental Laboratory Accreditation Program by using the test methods specified in California Code of Regulations, title 22, section 66279.90(b).”*

#### **Comment #10**

Part V., Condition M.2.c.(1)(E)

This condition states: “[t]he Permittee shall review the GWPW document and enter into the operating log the reason that the rebuttable presumption can be rebutted pursuant to California Code of Regulations, title 22, section 66279.10(b), (b)(1) and (2).” The requirement to enter into the “operating log” the reason that the rebuttable presumption can be rebutted is redundant and unnecessary. A generator may sign a separate Waste Oil Certification letter certifying that its oil has been rebutted per California Code of Regulations, title 22, sections 66279.10(b)(1) and (2) and that the used oil has not been mixed with any halogenated hazardous wastes. Such letters accompany the GWPW and the manifest or are submitted in advance. For used oils containing greater than 1,000 parts per million (“ppm”) of halogens, D/K Dixon’s review of this certification statement is an appropriate procedure to rebut the presumption. The analytical results (as well as the manifest and GWPW) are maintained in the operating record. Therefore, this condition should be revised to properly reflect the procedure used to rebut the presumption and record documentation in the operating record. D/K Dixon requests that this condition be revised to state:

“The Permittee shall review the GWPW document and place it into the operating record. This documentation must contain a certification made by the generator that the used oil was not mixed with any halogenated hazardous wastes so that the rebuttable presumption may be rebutted pursuant to California Code of Regulations, title 22, section 66279.10(b), (b)(1) and (2).”

**Response to Comment #10:**

*The purpose of the condition is to require the Permittee to provide evidence in the Facility's records of the reason(s), based on testing and data analysis, that the rebuttable presumption may be rebutted pursuant to California Code of Regulations, title 22, section 66279.10(b)(1) and (2). D/K Dixon's proposed revisions would remove obligations on the Permittee to review and verify analytical information, and would instead simply allow the Facility to place a generator's certification, which may be based on "generator knowledge" rather than testing and analysis, in the record.*

*Used oil containing more than 1,000 ppm total halogens is presumed to be a RCRA hazardous waste because it has been mixed with a halogenated hazardous waste listed in Subpart D of Part 261, Title 40, Code of Federal Regulations. Failure to rebut the presumption means that the used oil must be managed as a hazardous waste and the Permittee must reject the load. The Permit offers the Permittee the flexibility to rely on the generator's testing rather than requiring the Permittee to conduct its own testing to rebut this presumption.*

*D/K's comment ignores the purpose of this condition and the proposed revisions undermine the effectiveness and enforceability of the Permit. This condition becomes applicable only after the Facility has confirmed that the used oil contains halogens exceeding 1000 ppm. If used oil contains greater than 1,000 ppm total halogens, DTSC presumes that the used oil has been mixed with a listed hazardous waste, it must be managed as a RCRA hazardous waste and the Facility cannot accept it as used oil. D/K Dixon's proposal to allow the Permittee to rely on "a signed certification by the generator that the used oil was not mixed with any halogenated hazardous waste" does not make sense because: (1) this generator's certification would have been prepared before the Permittee received and tested the waste, and (2) the certification would not change the Permittee's test results showing halogens at levels greater than 1000 ppm. The used oil would still contain halogens at levels above 1000 ppm, despite the generator's certification. Therefore, the Permittee can only demonstrate through analytical testing, either by the Permittee or the generator, that (1) the earlier test results were erroneous; or (2) the used oil does not contain significant concentrations of any of the individual halogenated listed hazardous wastes.*

*If D/K's revisions were adopted, it would become much more likely that waste that should not be sent to the Facility would be received and accepted. It would be very difficult if not impossible for DTSC to conduct meaningful audits and inspections that would allow DTSC to determine whether the Facility is complying with the Permit, statutes and regulations.*

*To clarify the condition, Condition M.2.c.(1)(E) has been revised to read as follows:*

*“After reviewing the documents obtained under paragraphs V.M.2.c(1)(B) and (D), the Permittee shall place the documents into its operating record. These documents shall demonstrate that the rebuttable presumption can be rebutted pursuant to California Code of Regulations, title 22, section 66279.10(b), (b)(1) and (2).”*

### **Comment #11**

Part V., Condition M.2.c.(3)

This condition states: “Option 3. For used oil received from multiple generators (Consolidated Loads) and when the transporter provides fingerprint test data for each generator using EPA Test Method 9077.” The parenthetical reference to “(Consolidated Loads)” creates an implication that the category refers to shipments arriving using a consolidated manifest. Shipments received by D/K Dixon from multiple generators are not always “consolidated loads” where only a consolidated manifest was used. D/K Dixon receives shipments from multiple generators under the following three scenarios:

- The shipment (truck load) arrives under one or more consolidated manifests;
- The entire shipment is comprised of used oil from multiple generators, with each generators portion having its own manifest;
- The shipment is comprised of a combination of used oil under one or more consolidated manifests and used oil from multiple generators, with each generators portion having its own manifest.

Therefore, this condition must be revised to eliminate any implication that used oil received from multiple generators is limited to a consolidated load using a consolidated manifest. D/K Dixon requests that this condition be revised to state:

“Option 3. For used oil received from multiple generators and when the transporter provides fingerprint test data for each generator using EPA Test Method 9077.”

### **Response to Comment #11:**

DTSC agrees with the comment. The term “(Consolidated Load)” has been deleted for clarity. Therefore, Permit Condition V.M.2.c.(3) has been revised to read as follows:

*“Option 3. For used oil received from multiple generators in a single transport vehicle and when the transporter provides fingerprint test data for each generator using EPA Test Method 9077.”*

**Comment #12**

Part V., Condition M.2.c.(3)(B)(i)

This condition states: “The Permittee shall obtain the fingerprint test data referenced on M.2.c.(3) above from the transporter; and (i) For any generator whose used oil has a concentration that exceeds 1000 ppm total halogens, the Permittee shall receive and have on file proper documentation and follow the procedures in Option 1 above.”

This condition incorporates the problems identified in Option 1, which further emphasized the need to cure those problems. Our comments concerning those conditions discussed above are incorporated herein.

**Response to Comment #12:**

*The issues raised in this comment and other issues identified in Option 1 have already been addressed by DTSC in Response to Comment 7 to 10 above.*

**Comment #13**

Part V., Condition M.2.c.(4)

This condition states: “Option 4. For used oil received from multiple generators (Consolidated Loads) and when the transporter cannot provide fingerprint data for each generator using EPA Test Method 9077, but the transporter has collected individual samples from each generator and retained the samples along with the load.”

As discussed above in our comments for Part V., Condition M.2.c.(3), D/K Dixon receives used oil from multiple generators that is not on a consolidated manifest. D/K Dixon requests that this condition be revised to state:

“Option 4. For used oil received from multiple generators, and when the transporter cannot provide fingerprint data for each generator using EPA Test Method 9077, but the transporter has collected individual samples from each generator and retained the samples along with the load.”

**Response to Comment #13:**

*DTSC agrees with the comment. The term “(Consolidated Load)” has been deleted for clarity. Therefore, Permit Condition V.M.2.c.(4) has been revised to read as follows:*

*“Option 4. For used oil received from multiple generators and when the transporter cannot provide fingerprint data for each generator using EPA Test Method 9077, but the transporter has collected individual samples from each generator and retained the samples along with the load.”*

#### **Comment #14**

Part V., Condition M.2.c.(5)

This condition states:

Option 5. For used oil received from multiple generators (Consolidated Loads) and when the transporter cannot provide fingerprint data or retained samples as discussed in Options 3 and 4 above, the Permittee may rebut the presumption only through analytical testing in accordance with the test methods specified in California Code of Regulations, title 22, section 66279.90(b) accompanied by a determination that the rebuttable presumption is rebutted pursuant to California Code of Regulations, title 22, section 66279.10(b), (b)(1) and (2).

First, as discussed above in our comments for Part V., Condition M.2.c.(3) and Part V., Condition M.2.c.(4), D/K Dixon receives used oil from multiple generators that is not on a consolidated manifest. Thus, this condition needs to be revised so that used oil from multiple generators is not restricted to consolidated loads using a consolidated manifest.

Second, D/K Dixon objects to the permit condition's requirement that analytical data be “accompanied by a determination that the rebuttable presumption is rebutted pursuant to California Code of Regulations, title 22, section 66279.10(b), (b)(1) and (2).” California Code of Regulations, title 22, section 66279.10(b) states that persons may rebut the presumption by “demonstrating through analytical testing or other means of demonstration that the used oil does not contain such hazardous waste.” According to this section, and D/K Dixon's own procedures, the analytical test results themselves are the determination that the presumption can be rebutted. These analytical results are also placed in the facility operating record. Accordingly, this requirement should be deleted. D/K Dixon requests that this condition be revised to state:

“Option 5. For used oil received from multiple generators, and when the transporter cannot provide fingerprint data or retained samples as discussed in Options 3 and 4 above, the Permittee may rebut the presumption only through

analytical testing in accordance with the test methods specified in California Code of Regulations, title 22, section 66279.90(b) and pursuant to the procedures and criteria described in California Code Regulations, title 22, section 66279.10(b), (b)(1) and (2).”

**Response to Comment #14:**

*DTSC agrees with the first part of the comment. D/K Dixon may receive used oil from multiple generators without a consolidated manifest. Therefore, the term “(Consolidated Load)” may be inaccurate and has been deleted for clarity.*

*DTSC believes that D/K Dixon misinterpreted the term “determination”. DTSC did not intend to require the Permittee to make an extra determination separate from the analytical testing. To clarify this condition, DTSC is replacing the term “accompanied by a determination” with “to demonstrates”.*

*Therefore, Permit Condition V.M.2.c.(5) has been revised to read as follows:*

*“Option 5. For used oil received from multiple generators and when the transporter cannot provide fingerprint data or retained samples as discussed in Options 3 and 4 above, the Permittee may rebut the presumption only through analytical testing in accordance with the test methods specified in California Code of Regulations, title 22, section 66279.90(b) to demonstrate that the rebuttable presumption is rebutted pursuant to California Code of Regulations, title 22, section 66279.10(b), (b)(1) and (2).”*

**Comment #15**

Part V., Condition N.2

This condition states: “All outgoing used oil shall be tested for PCBs to ensure that the used oil load does not contain PCBs at a concentration of 2 ppm or greater. The Permittee shall test the used oil from each storage tank for PCBs pursuant to the procedures specified in Condition N.2.a. below or the Permittee shall comply with the requirements in Condition N.2.b. which provide for the receiving facility to test the used oil for PCBs.”

D/K disagrees with the alternative testing condition set out in the permit. This provision allows only two methods for testing for PCBs. Specifically, D/K Dixon should not be limited to testing an onsite storage tank or requiring a receiving facility to test each individual truck for PCBs. D/K Dixon sends used oil to the D/K recycling facility in Compton. The D/K Compton facility consolidates individual loads of used oil into receiving tanks and tests those tanks for PCBs, as specified in the facility Waste Analysis Plan. It is impractical, unnecessary

and unfair to require receiving facilities permitted by DTSC to test D/K Dixon's used oil on a truck by truck basis. This is inconsistent with D/K Compton's existing permits and will result in the facility being required to comply with two overlapping sets of PCB testing requirements. In the alternative, it is unfair to D/K Dixon to either test onsite or require D/K to apply a different testing protocol than that specified in its approved WAP. This places D/K Dixon at a competitive disadvantage with transporters who otherwise can take their oil directly to D/K Compton or other receiving facilities.

We note that our firm has submitted comments on behalf of D/K Compton in their appeal of the American Oil permit that has raised numerous environmental and regulatory issues regarding a similar PCB testing procedure. We hereby incorporate those comments and the policy arguments and legal objections raised therein by reference and attach those letters hereto (see Attachment 2). The permit should acknowledge the existing in-state management scheme and allow waste to be tested at permitted in-state facilities pursuant to the facility WAP. It may make sense to require out-of-state facilities to test individual trucks because the oil could legally be commingled with high PCB oil. Or it may make sense to require trucks bound for out-of-state facilities to be tested on a truck by truck basis for similar reasons. It makes no sense to do so for D/K Dixon, which sends all of its oil to D/K Compton.

D/K Dixon requests that this condition or Condition N.2.b be revised to allow D/K Dixon to send used oil to D/K Compton and be tested for PCBs according to the facility's WAP.

**Response to Comment #15:**

*DTSC denies D/K Dixon's request to allow D/K Dixon to send used oil to D/K Compton and have the used oil tested for PCBs according to D/K Compton's Waste Analysis Plan for the following reasons.*

*First, this condition provides the Permittee with flexibility to have the waste tested at the receiving facility rather than at the D/K Dixon Facility, but with enough safeguards to ensure the integrity of the process. The Permit condition is intended to ensure that a receiving facility accepts legally authorized used oil. The condition ensures that D/K Dixon and receiving facilities accept used oil and not another type of hazardous waste contaminated with PCBs. Although the testing procedures this condition requires for receiving facilities to implement may differ from their current waste acceptance practices, requirements of this condition are not intended to contradict or conflict, with any receiving facility's WAP. The condition is intended to provide procedures that any receiving facility could follow in addition to the procedures outlined in its WAP.*

*D/K Dixon's claim that the condition's testing procedures for the receiving facility conflict with the D/K Compton WAP are not substantiated and are inaccurate. DTSC reviewed the D/K Compton WAP and concluded that this Permit's testing procedures for PCBs in used oil are consistent with the D/K Dixon WAP. There is a difference in management practices for used oil prior to testing, but nothing in the D/K Compton permit, WAP or application precludes D/K Compton from sampling and testing each truckload of used oil in accordance with the PCB testing procedures in this Permit. D/K Compton is allowed to consolidate waste prior to testing, but none of the documents referenced above preclude D/K Compton from also testing D/K Dixon's loads prior to consolidation.*

*D/K Dixon's comment also fails to recognize that the receiving facility is providing a contractual service to the Permittee. If the receiving facility does not wish to abide by the instructions contained in Condition V.N.2, the Permittee has the option to send the waste to another receiving facility that will follow the Permittee's instructions. Used oil recycling facilities in California operated by Industrial Services and Evergreen test used oil in each in-coming truck before it is unloaded into the tanks and neither facility has cited backlogs or other negative impacts.<sup>1</sup>*

*D/K Dixon's claim that the Permit places them at unfair disadvantage vis-à-vis transporters is not germane because D/K Dixon is regulated as a permitted treatment, storage and disposal facility. D/K Dixon is subject to additional requirements to ensure the used oil it receives and manages is in fact used oil.*

*With regard to the regulatory, policy and legal arguments that D/K Dixon incorporated from the American Oil appeal, DTSC responds as follows. Imposing testing requirements for PCBs on used oil transfer facilities on a permit by permit basis is not an underground regulation because it implements existing statutory and regulatory authority. The requirement to include PCB testing as a permit condition is intended to ensure that a receiving facility accepts legally authorized used oil. DTSC may impose any conditions on a hazardous waste facilities permit that are consistent with the intent of Chapter 6.5, Division 20, Health and Safety Code (Health & Saf. Code § 25200(a)). Permits are required to contain conditions necessary to meet the operating requirements for permitted facilities (Cal. Code Regs., tit. 22, § 66270.32 (b)(1)). Permits shall also contain terms and conditions DTSC determines necessary to protect human health and the environment (Cal. Code Regs., tit. 22, § 66270.32 (b)(2)). For these reasons, the condition does not violate the Administrative Procedures Act (APA) ([Gov. Code §§ 11340 et. seq.](#)). DTSC considered and rejected Demenno/Kerdoon's environmental arguments in the Final Decision on Appeal from Facility Permit*

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<sup>1</sup> Final Decision on Appeal from Facility Permit Decision in the Matter of American Oil (Docket HWCA 06/07- P0001), October 13, 2007, p.6.

*Decision in the Matter of American Oil (Docket HWCA 06/07-P0001) issued on October 19, 2007 (the American Oil Final Decision). In that decision, DTSC concluded 1) the idling emissions or wait time will be significantly reduced; 2) the number of shipments of used oil rejected at treatment facilities will be reduced because suspect shipments will be tested prior to transport; and 3) the inadvertent mixture of used oil with used oil containing PCBs will be reduced. (See, Section 2 of DTSC's response to Appeal Comment 1 of the American Oil Final Decision, incorporated herein by reference.)*

*All required environmental analysis has been conducted and the appropriate California Environmental Quality Act (CEQA)(Pub. Res. Code § 21000 et seq.) processes have been followed. DTSC has issued a Negative Declaration in accordance with CEQA and the State CEQA guidelines. Based on the Negative Declaration, DTSC has found that the project will not have any significant adverse effects on the environment. (See, Negative Declaration, Response to Comments, and Part III.C of the Permit in the Administrative Record). Further, CEQA provides a separate process for appealing CEQA issues. It is not appropriate for D/K Dixon to raise any CEQA issues in the permit appeal process.*

### **Comment #16**

Part V., Condition N.2.a.(4)

This condition states: "If the used oil contains PCBs at a concentration of 2 ppm or greater, a second sample shall be obtained and tested after cleaning the sampling equipment using the permanganate cleanup procedure." This permit condition does not allow for use of another separate piece of sampling equipment. There is no reason to require the second sample to be obtained using the same piece of sampling equipment which was used to collect the first sample. The only standard that should be specified is that any additional samples must be taken using sampling equipment that has been cleaned using the permanganate cleaning procedure. Therefore, this condition must be revised to reflect this necessary sampling flexibility. Also, pursuant to TSCA regulations, Stoddard solvent should be used to decontaminate equipment contaminated with PCBs, not permanganate. D/K Dixon requests that this condition be revised to state:

"If the used oil contains PCBs at a concentration of 2 ppm or greater, a second sample shall be obtained and tested. The second sample shall be obtained using sampling equipment that is new or has been cleaned using an appropriate decontamination procedure."

### **Response to Comment #16:**

*DTSC agrees that the equipment used to obtain the second sample shall not be limited to the same sampling equipment. DTSC also agrees that a different cleaning solution other than permanganate may be appropriate for use to decontaminate the sampling equipment. Therefore, Permit Condition V.N.2.a.(4) has been revised to read as follows:*

*"If the used oil contains PCBs at a concentration of 2ppm or greater, a second sample shall be obtained and tested. The second sample shall be obtained using sampling equipment that is new or has been cleaned using (i) the permanganate cleanup procedure (EPA Method 3665A); or (ii) an appropriate decontamination procedure that has been approved in writing by DTSC for use at the Facility."*

### **Comment #17**

Part V., Condition N.2.b.(1) and (2)

These conditions state:

If the Permittee elects to have the receiving facility test the used oil for PCBs and the receiving facility agrees to test the used oil for PCBs in accordance with the Condition N, the Permittee shall provide written instructions to the receiving facility that directs it to test the used oil for PCBs to ensure that the used oil load does not contain PCBs at a concentration of 2 ppm or greater. The instructions shall, at a minimum, direct the receiving facility to do all the following:

- (1) Take a sample for PCBs testing directly from the Permittee's used oil load and test the Permittee's used oil load separately from any other load.
- (2) Do not unload the truck or commingle the Permittee's used oil load with any other used oil at the receiving facility until PCBs testing indicated that the Permittee's load does not contain PCBs at a concentration of 2 ppm or greater.

As noted above, D/K Dixon sends its used oil to D/K Compton. The conditions in Part V., Condition N.2.b.(1) and (2) are inconsistent with D/K Compton's WAP. It is inappropriate for DTSC to require D/K Dixon to provide instructions to a permitted hazardous waste facility to handle waste in a manner inconsistent with its WAP. It is not an appropriate response to state that D/K Dixon can test the waste onsite. While true, that position places D/K Dixon in a different position from other D/K Compton customers and could result in costs not imposed on other used oil management companies.

In addition, as noted in comments submitted on behalf of D/K in the American Oil appeal, the standards imposed in these conditions also constitutes an underground regulation with potentially significant environmental consequences due to the failure to comply with the APA and CEQA.

D/K Dixon requests that these conditions be revised to state:

"If the Permittee elects to send used oil to a recycling facility that has not been issued a treatment permit by DTSC, the Permittee shall provide written instructions to the receiving facility that directs it to test the used oil for PCBs to ensure that the used oil load does not contain PCBs at a concentration of 2 ppm or greater. The instructions shall, at a minimum, direct the receiving facility to do all the following:

- (1) Take a sample for PCBs testing directly from the Permittee's used oil load and test the Permittee's used oil load separately from any other load.

(2) Do not unload the truck or commingle the Permittee's used oil load with any other used oil at the receiving facility until PCBs testing indicated that the Permittee's load does not contain PCBs at a concentration of 2 ppm or greater. If the Permittee elects to send the used oil to a recycling facility issued a treatment permit by DTSC and have the facility test the used oil for PCBs, the receiving facility shall comply with the provisions of its approved Waste Analysis Plan."

**Response to Comment #17:**

*As noted in Response to Comment #15, DTSC reviewed D/K Compton's Waste Analysis Plan and concluded that the PCB Testing Conditions (including this condition) in the Permit do not conflict with D/K Compton's Waste Analysis Plan. See Response to Comment #15 for further explanation on this issue.*

*D/K Dixon cites comments submitted on behalf of D/K in the American Oil appeal that imposing these conditions constitutes an underground regulation. DTSC disagrees that imposing the PCB testing requirements constitutes underground regulations. DTSC has already denied similar arguments for reasons stated in DTSC's Response to Appeal Comment 1 in Part V. of the American Oil Final Decision, incorporated herein by reference. Imposing testing requirements for PCBs on used oil transfer facilities on a permit by permit basis is not an underground regulation because it implements existing statutory and regulatory authority. The requirement to include PCB testing as a permit condition is intended to ensure that a receiving facility accepts legally authorized used oil. DTSC may impose any conditions on a hazardous waste facilities permit that are consistent with the intent of Chapter 6.5, Division 20, Health and Safety Code. (Health & Saf. Code § 25200(a).) Permits are required to contain conditions necessary to meet the operating requirements for permitted facilities. (Cal. Code Regs., tit. 22, § 66270.32 (b)(1).) Permits shall also contain terms and conditions DTSC determines necessary to protect human health and the environment. (Cal. Code Regs., tit. 22, § 66270.32 (b)(2).)*

*Permitted facilities are required to have and follow a waste analysis plan. (Cal. Code Regs., tit. 22, §66264.13). This plan must be included in the permit application. (Cal. Code Regs., tit. 22, §66270.14 (b)(3).) In addition, PCB testing requirements in the waste analysis plan will not be of a uniform general application, but will depend on the operational specifics of the individual facility.*

**Comment #18**

Part V., Condition N.2.b.(4)

This condition states, "Write the manifest number on the written test results for the used oil that was tested."

As noted above, D/K Dixon sends its used oil to D/K Compton. The condition in Part V., Condition N.2.b.(4) is inconsistent with D/K Compton's WAP. It is inappropriate for DTSC to require D/K Dixon to provide instructions to a permitted hazardous waste facility to handle waste in a manner inconsistent with its WAP. It is not an appropriate response to state that D/K Dixon can test the waste onsite. While true, that position places D/K Dixon in a different position from other transporters with associated higher costs.

D/K Dixon requests that this condition be conformed to apply only to receiving facilities that do not hold DTSC issued permits.

**Response to Comment #18:**

*See Response to Comment #15 regarding the issue of this permit condition inconsistency with D/K Compton's Wastes Analysis. For the reasons discussed in Response to Comment #15, DTSC denies D/K Dixon's requests that this condition apply only to receiving facilities that do not hold DTSC issued permits.*

**Comment #19**

Part V., Condition N.2.b.(5)

This condition states: "Provide the Permittee with written test results within 24 hours after the test has been performed. The written test results shall clearly show whether or not the used oil loads contains PCBs at a concentration of 2 ppm or greater."

This requirement is unnecessary and there is no regulatory requirement to support it. There is no need for the used oil receiving (recycling) facility to provide written test results within 24 hours. Therefore, this condition must be removed entirely from the permit.

**Response to Comment #19:**

*DTSC believes the requirement to provide test results quickly is necessary because if test results indicate that the receiving facility must reject the waste, the Permittee needs this information quickly so that it can implement alternative plans for the waste. Findings of this nature would trigger further testing of waste at the Facility because these test results would indicate that the Permittee has received used oil that may contain PCBs at concentrations above permissible limits. The 24 hour time limit is also practical. The condition is authorized by California Code of Regulations, title 22, section 66270.32(b)(2), which states that*

*permits shall contain terms and conditions that DTSC determines are necessary to protect human health and the environment.*

## **Comment #20**

Part V., Condition N.2.b.(6)

This condition states: "Reject the load if the test results show that the used oil contains PCBs at a concentration of 2 ppm or greater."

This standard adopts a standard of general application that is unnecessary and there is no regulatory requirement to support it. The standard for used oil is 5 ppm. This standard is inconsistent with both California and federal regulatory schemes for used oil. Therefore, this condition must be changed to 5 ppm or be removed entirely from the permit.

### **Response to Comment #20:**

*DTSC denies that this condition be changed to 5 ppm or be removed from the Permit. The 2 ppm or greater requirement is not a rule or standard of general application. It is a requirement to be considered in a specific case in a specific permit. The 2 ppm or greater requirement is a screening procedure that enables the Permittee to avoid testing each individual load for concentrations at or above 5ppm. The Permittee has requested authorization from DTSC to operate a hazardous waste facility to accept and store used oil as defined in Health and Safety Code, Section 25250.1. One of the standards for used oil is that it cannot contain PCBs at 5 ppm or greater. As the operator of an offsite hazardous waste facility, the Permittee is required to perform waste analysis in accordance with California Code of Regulations, title 22, section 66264.13 to ensure that the waste accepted meets the definition of used oil. This is usually accomplished by testing. Rather than requiring the Permittee to test each incoming load of used oil for PCBs to ensure it meets used oil standards, DTSC developed the practical procedure provided in this Permit that allows the Facility to accept incoming loads of used oil and consolidate the used oil into larger storage tanks. Once an adequate quantity of used oil has been accumulated and is ready to be shipped offsite, the Permittee is required to sample the storage tank and test for PCBs. A screening level of 2 ppm was chosen to account for the dilution of consolidating many loads of used oil into larger storage tanks. To increase flexibility for this Facility, DTSC has allowed for testing of the storage tank onsite or testing of the outgoing loads at the receiving facility. Thus, DTSC has provided an approach that is practical and avoids a greater burden being placed on the Permittee, provided certain conditions are met.*

*The condition is consistent with State and federal regulatory approaches. DTSC has statutory and regulatory authority to impose this condition as discussed in Response to Comment #15 above, incorporated herein by reference. The 2 ppm threshold is also consistent with the federal regulatory scheme. According to the*

*American Oil Final Decision, "Used oil containing detectable levels (2ppm) of PCBs is subject to regulation pursuant to 40 Code of Federal Regulations section 761.20(e). Used oil containing 2 ppm, but less than 50 ppm of PCBs must be managed in accordance with 40 Code of Federal Regulations part 270 and can only be burned in a qualified incinerator as defined in 40 Code of Federal Regulations section 761.3. Used oil burners containing 2-49 ppm PCBs are subject to tracking and notice requirements in 40 Code of Federal Regulations 279, Subparts G&H and section 279.66 and 40 Code of Federal Regulations section 279.72(b). Used oil containing PCBs at 50 or above must be managed in accordance with 40 Code of Federal Regulations part 761." (American Oil Final Decision pp 5-6, incorporated herein by reference). Therefore, the condition's use of the 2 ppm screening level is consistent with the federal regulatory scheme.*

### **Comment #21**

Part V., Condition N.2.b.(7)

This condition states: "Provide a signed certification, under penalty of perjury, for each set of test results, to the Permittee stating that the receiving facility has followed all of the Permittee's written instructions for each used oil load received from the Permittee."

This condition constitutes a standard of general application that is unnecessary and there is no regulatory requirement to support it. This standard is inconsistent with both California and federal regulatory schemes for used oil. Therefore, this condition must be removed entirely from the permit.

### **Response to Comment #21:**

*DTSC denies D/K Dixon's request that Condition V.N.2.b.(7) be removed from the Permit. California Code of Regulations, title 22, section 66264.13 requires facilities to conduct waste analysis to ensure the identity of the waste. In this case, the Permittee must ensure that used oil accepted and managed at the Facility meets the used oil standards in Health and Safety Code section 25250.1. This is normally done by testing the used oil. Instead of requiring the Facility to test each incoming load of used oil, this condition provides this Permittee with the flexibility to test the used oil onsite or have the receiving facility test for them.*

*Condition N.2.b.(7) is necessary because the Permit allows the Permittee to transfer its responsibility for waste analysis to a third-party off-site facility obligated to test the waste. Thus, it is imperative that DTSC have a method of verifying the results. Requiring that the receiving facility submit a signed certification under penalty of perjury provides assurances that the testing was conducted properly and also provides a mechanism for enforcement against the*

*third-party receiving/testing facility. It is in the Permittee's best interest to obtain this information, because the Permittee has the ultimate responsibility for the waste. Regarding consistency with State and federal regulatory schemes, please see the arguments in Response to Comment #20 above and Part V, Section 3 in the American Oil Final Decision, incorporated herein by reference.*

## **Comment #22**

Part V., Condition N.4.

This condition states: "[t]he Permittee shall immediately notify DTSC of any rejected load due to PCB contamination by e-mail and in writing and provide the written test results to DTSC within seven (7) days of obtaining the test results. The Permittee shall comply with the requirements of Health and Safety Code section 25160 for any rejected load."

D/K Dixon objects to this requirement to immediately notify DTSC concerning a rejected load and to provide the written results to DTSC within seven days after receiving them. Neither the California Health and Safety Code nor the California Code of Regulations contain a requirement to immediately notify DTSC concerning any rejected load or provide written results to DTSC within 7 days after receiving them. California Health and Safety Code section 25160 and California Code of Regulations, title 22, section 66264.72 (Manifest Discrepancies) both contain specific procedures to be followed when rejecting a shipment of hazardous waste, including manifest procedures and reporting of the manifest discrepancy to DTSC, but there is no requirement to notify DTSC immediately regarding a rejected load or provide written test results to DTSC within 7 days after receiving them. Therefore, this condition is unnecessary and inconsistent with existing law. D/K Dixon requests that the condition be revised to state:

"The Permittee shall comply with the requirements of Health and Safety Code section 25160 for any rejected load."

## **Response to Comment #22:**

*DTSC denies D/K Dixon's request to remove the immediate notification to DTSC of a rejected load and providing the test results to DTSC within 7 days. A rejected load would be an indication that the Facility has accepted PCB-contaminated waste in violation of the Permit and that the Facility may have additional PCB-contaminated wastes. Immediate notification to DTSC of the rejected load would allow DTSC to monitor the situation and ensure the Facility has taken the appropriate steps to properly dispose of any remaining PCB-contaminated wastes and also have properly decontaminated the storage tanks prior to returning the tanks to service. DTSC may also want to inspect the facility and obtain samples of the PCB-contaminated waste to assist in any potential*

*enforcement case against the Facility. The condition is authorized by California Code of Regulations, title 22, section 66270.32(b)(2), which states that permits shall contain terms and conditions that DTSC determines are necessary to protect human health and the environment.*

**Comment #23**

Part V., Condition R.2.

This condition states: "The Permittee shall completely empty the wastes from the tank and then pressure wash the inside of the tank to remove all visible waste residues before the usage is changed." With respect to used oil and oily water, there is no reason to pressure wash a tank before switching tank service between these wastes. These waste streams are all compatible petroleum/oil-based wastes that have met acceptance standards. D/K Dixon requests that DTSC only require these tanks to be completely emptied prior to switching service between these wastestreams. Further, pressure washing used oil, oily waste, or contaminated petroleum products tanks unnecessarily creates more hazardous waste (i.e. more oily water) which must then be properly managed. D/K Dixon sees no need for this requirement and is confused as to why DTSC has required this type of tank cleaning when switching between petroleum/oil-based waste streams.

D/K Dixon requests that this condition be revised to state:

"The Permittee shall completely empty the wastes from the tank to remove all visible waste residues before the usage is changed."

**Response to Comment #23:**

*DTSC agrees more hazardous waste will be generated when switching the storage waste stream of a tank from Used Oil to Oily Water. Therefore DTSC will change condition R to read:*

- R.** *This Permit authorizes the change in usage of tanks, as authorized in Table 1, under all of the following conditions:*
- 1.** *The Permittee shall completely empty the wastes from the tank, until no more waste comes out to assure that the tank is empty when the usage is changed.*
  - 2.** *The Permittee shall indicate in the Operating Log the change in service of a Tank.*

3. *The Permittee shall clearly identify on the outside of the tank the type of waste stored in the tank.*

*In addition DTSC will delete Condition S of Part V of the permit since the above requirements will be applicable to all authorized changes of Table 1 within the permit.*

#### **Comment #24**

##### Part VI. (Corrective Action)

This section requires D/K Dixon to submit various corrective action plans and reports, as well as conduct soil sampling and analysis at the facility to assess the extent of previously released hazardous constituents and hazardous wastes. The impacts to soil and groundwater at D/K Dixon are attributed to former leaking underground storage tanks at the site. D/K Dixon is therefore currently enrolled in the California Underground Storage Tank Cleanup program. This program is administered by the SWRCB, but authority to implement the program has been granted to the CVRWQCB. There are currently ongoing subsurface assessment and cleanup activities, pursuant to an approved Remedial Action Plan, at D/K Dixon which are under the direction of the Solano County Department of Resource Management ("SCDRM"), who is acting as the local oversight agency for the Central Valley Regional Water Quality Control Board ("CVRWQCB"). Local agency oversight for underground fuel storage tank cases is provided through the county's Local Oversight Program contract with the State Water Resources Control Board ("SWRCB").

Before DTSC imposes its own corrective action requirements on D/K Dixon, they must first consult with both the SCDRM and the CVRWQCB to determine whether there is even a need for DTSC to impose any corrective action requirements beyond what is already being required by Solano County and the CVRWQCB. California Health and Safety Code section 25204.6(b)(2) requires that there be coordination between DTSC, the State Water Resources Control Board and the Regional Water Quality Control Boards concerning jurisdiction over corrective action at permitted facilities. Specifically, this section states:

- (b) The hazardous waste facility regulation and permitting consolidation program shall provide for all of the following
  - (2) The development of a process for ensuring, at each facility which conducts offsite hazardous waste treatment, storage, or disposal activities, or which conducts onsite treatment, storage, or disposal activities which are required to receive a permit under the federal act, and which is required to clean

up or abate the effects of a release of a hazardous substance pursuant to Section 13304 of the Water Code, or which is required to take corrective action for a release of hazardous waste or constituents pursuant to Section 25200.10, or both, that sole jurisdiction over the supervision of that action is vested in either the department or the State Water Resources Control Board and the California regional water quality control boards.

This statute clearly indicates that sole jurisdiction for corrective action at a permitted facility must be vested in either the DTSC or the State/Regional water boards, and not in two agencies simultaneously. In Part VI. of D/K Dixon's Draft Permit, DTSC is imposing corrective action requirements as if it were the lead agency when, in fact, it is not. Therefore, DTSC must first consult with both the CVRWQCB and Solano County regarding corrective action at D/K Dixon before they may impose any additional corrective action requirements at the facility. If, after consultation with these other agencies it is agreed among all of them that DTSC should be designated as lead agency for corrective action at D/K Dixon, we would not oppose that designation. D/K Dixon merely requests that DTSC first follow the proper coordination procedures as required by the Health and Safety Code. D/K Dixon therefore requests that this condition be revised to state:

"The D/K Dixon site is currently under Corrective Action. The impacts to soil and groundwater at D/K Dixon are attributed to former leaking underground storage tanks at the site. D/K Dixon is currently enrolled in the California Underground Storage Tank Cleanup program. This cleanup program is administered by the State Water Resources Control Board ("SWRCB"), and authority to implement the program has been granted to the Central Valley Regional Water Quality Control Board ("CVRWQCB"). D/K Dixon is currently implementing ongoing subsurface assessment and cleanup activities at the site, pursuant to an approved Remedial Action Plan, under the direction of the Solano County Department of Resource Management ("SCDRM") who is acting as the local oversight agency for the CVRWQCB. Local agency oversight for underground fuel storage tank cases is provided through the county's Local Oversight Program contract with the SWRCB.

DTSC may require the permittee to conduct further corrective action at the facility pursuant to California Health and Safety Code sections 25187 and 25200.10, if DTSC determines that there has been a release of hazardous waste at or from the facility, based on the latest analytical results for soil samples or other information available to DTSC. If DTSC wishes to require further corrective action, DTSC will first consult with the SCDRM and the CVRWQCB to determine whether there is a need to impose further corrective action requirements beyond what is already being required by the SCDRM and CVRWQCB.

In the event that D/K Dixon identifies an immediate or potential threat to human health and/or the environment, or discovers new releases of hazardous waste and/or hazardous constituents, or discovers new Solid Waste Management Units not previously identified, D/K Dixon must notify DTSC, CVRWQCB and SCDRM orally within 24 hours of discovery and also notify DTSC, CVRWQCB and SCDRM in writing within 10 days of discovery summarizing the findings, including the immediacy and magnitude of any potential threat to human health and/or the environment.

DTSC may require D/K Dixon to investigate, mitigate and/or take other necessary action to address any immediate or potential threats to human health and/or the environment, or to address any identified releases of hazardous waste and/or hazardous constituents. If further investigation or mitigation is required, both the SCDRM and CVRWQCB will be notified by DTSC to determine whether there is a need to impose any corrective action requirements beyond what is already being required by the SCDRM and CVRWQCB.”

**Response to Comment #24:**

*DTSC will modify Part VI of the permit to read:*

- 1. The Permittee shall conduct corrective action at the Facility pursuant to Health and Safety Code sections 25187 and 25200.10. Corrective action shall be carried out under: case # 480215 of the Central Valley RWQCB working with Solano County case # 80044.*
- 2. To the extent that work being performed pursuant to Part VI of the Permit must be done on property not owned or controlled by the Permittee, the Permittee shall use its best efforts to obtain access agreements necessary to complete work required by this Part of the Permit from the present owner(s) of such property within 30 days of approval of any workplan for which access is required. “Best efforts” as used in this paragraph shall include, at a minimum, a certified letter from the Permittee to the present owner(s) of such property requesting access agreement(s) to allow the Permittee and DTSC and its authorized representatives access to such property and the payment of reasonable sums of money in consideration of granting access. The Permittee shall provide DTSC with a copy of any access agreement(s). In the event that agreements for the access are not obtained within 30 days of approval of any workplan for which access is required, or of the date that the need for access becomes known to the Permittee, the Permittee shall notify DTSC in writing within 14 days thereafter regarding both efforts undertaken to obtain access and its failure to obtain such agreements. In the event DTSC obtains access, the*

*Permittee shall undertake approved work on such property. If there is any conflict between this permit condition on access and the access requirements in any agreement entered into between DTSC and the Permittee, this permit condition on access shall govern.*

3. *Nothing in Part VI of the Permit shall be construed to limit or otherwise affect the Permittee's liability and obligation to perform corrective action including corrective action beyond the facility boundary, notwithstanding the lack of access. DTSC may determine that additional on-site measures must be taken to address releases beyond the Facility boundary if access to off-site areas cannot be obtained.*
4. *In the event that Permittee identifies an immediate or potential threat to human health and/or the environment, or discovers new releases of hazardous waste and/or hazardous constituents, or discovers new Solid Waste Management Units not previously identified, the Permittee must notify DTSC, CVRWQCB, and SCDRM orally within 24 hours of discovery and in writing within 5 days of discovery summarizing the finding, including the immediacy and magnitude of any potential threat to human health and/or the environment.*
5. *DTSC may require the Permittee to conduct further corrective action at the facility pursuant to California Health and Safety Code sections 25187 and 25200.10, if DTSC determines that there has been a release of hazardous waste at or from the facility, based on the latest analytical results for soil samples or other information available to DTSC.*

## **Comment #25**

### Table 3

In Table 3 (Installation Schedule), it states that "the Permittee shall notify DTSC in writing and provide photographs of the applied epoxy coating." within 60 days of the effective day of this permit. The application of the coating, as cited in Table 3, is required in accordance with California Code of Regulations, title 22, section 66264.193(c)(1). This regulatory section states:

- (c) To meet the requirements of subsection (b) of this section, secondary containment systems shall be at a minimum:
  - (1) constructed of or lined with a materials that are compatible with the waste(s) to be placed in the tank system and shall have sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and

external hydrological forces), physical contact with the waste to which it exposed, climatic conditions and the stress of daily operation (including stress from nearby vehicular traffic).

This regulatory section does not require that an epoxy coating must be applied to the containment area. It provides a performance-based standard which could easily be met by using a number of different materials. While it is true that an epoxy coating is one of the materials that could meet this regulatory standard, the regulations do not specifically require it and therefore the word "epoxy" must be removed from Table 3. D/K Dixon must be allowed to choose the material they want to use which meets the regulatory standard. Further, the secondary containment coating standard in California Code of Regulations, title 22, section 66264.193(e)(2)(D) states that it must be "provided with an impermeable interior coating that is compatible with the waste being transferred, stored or treated and that will prevent migration of the waste into the concrete." This section also sets a standard of impermeability and does not specifically require that an epoxy coating be used to meet the impermeable requirement. Therefore, the statement in Table 3 must be revised to state: "the Permittee shall notify DTSC in writing and provide photographs of the applied impermeable coating."

**Response to Comment #25:**

*DTSC agrees with the comment. The Task Activity in Tank 3 has been revised to read as follows:*

*"The Permittee shall reapply a chemical resistant coating to Storage Area 1 and 2 in accordance to Cal. Code of Regs., title 22, section 66264.193(c)(1) prior to the installation of Tanks 1, 2, and 6."*

*and the corresponding Documentation from Facility required for task has been revised to read as follows*

*"The Permittee shall notify DTSC in writing and provide photographs of the applied chemical resistant coating."*