

1 STATE OF CALIFORNIA  
2 ENVIRONMENTAL PROTECTION AGENCY  
3 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

4 In the Matter of:  
5 EVERGREEN OIL, INC. - SANTA MARIA  
6 745-A West Betteravia Road  
7 Santa Maria, California 93454

8 EPA ID. NO. CAD 982 446 858  
9

Docket Number: PAT-FY08/09-06  
ORDER PARTIALLY GRANTING  
PETITION FOR REVIEW AND DENIAL  
OF REVIEW

California Code of Regulations,  
Title 22, Section 66271.18

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12 **I. INTRODUCTION**

13 On December 15, 2008, the Department of Toxic Substances Control's Permit  
14 Renewal Team (DTSC) issued a Standardized Hazardous Waste Facility Permit, Series  
15 C (Permit) to the Evergreen Oil, Inc. – Santa Maria ("Evergreen Santa Maria")  
16 hazardous waste storage and transfer facility located at 745-A West Betteravia Road,  
17 Santa Maria, California (Facility). On January 20, 2009, Mr. Philip Chandler (Petitioner)  
18 filed a Petition for Review (Appeal) of the Evergreen Oil, Inc. - Santa Maria permit  
19 decision.  
20

21 **II. JURISDICTION**

22 The Department of Toxic Substances Control has jurisdiction over hazardous  
23 waste facility permits and the imposition of conditions on such permits pursuant to the  
24 California Health and Safety Code sections 25200 et seq., 25186.1(b)(1) and California  
25 Code of Regulations, title 22, sections 66270.30 and 66271.18.  
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### III. BACKGROUND

**A. LOCATION AND DESCRIPTION OF THE FACILITY**

The location and description of the facility is presented in the Permit as follows:

The Evergreen Oil, Inc. – Santa Maria facility (Facility) is located at 745-A West Betteravia Road in Santa Maria, Santa Barbara County in California, at latitude 34° 55' 20" N and longitude 120° 26' 30" W. The Facility occupies approximately 4,000 square feet and is about 500 feet north of West Betteravia Road on a five acre property owned by Rosemary V. Engle, Carl W. Engle and the Carl. W. Engle Family Trust.

The Facility is an unmanned hazardous waste storage facility and is locked at all times. Hazardous waste (used oil, waste antifreeze, non-RCRA wastewater) is brought to the Facility in tanker trucks. Only Evergreen Oil, Inc.'s employees, including drivers, are allowed to unload and load hazardous waste at the Facility. Evergreen Oil, Inc.'s operations consist of collecting used oil, waste antifreeze, non-RCRA wastewater, and oil-contaminated solid waste from offsite generators (gas stations, oil changers, auto repair shops, etc.) and consolidating these wastes at the Facility before shipping them to an authorized hazardous waste treatment or disposal facility.

**B. PERMIT DECISION**

The Facility submitted a permit renewal application dated December, 2006. DTSC deemed the application technically complete on June 30, 2008. DTSC prepared a Draft Permit and a Draft Notice of Exemption in compliance with the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq. On or about July 2, 2008, DTSC issued a public notice, establishing the public comment period from July 2, 2008, through August 15, 2008, for the Draft Permit and accompanying CEQA document. The public notice also announced that a public meeting would be held at the Elwin Mussell Senior Center on July 24, 2008. DTSC received one comment letter from Mr. Philip Chandler, dated August 15, 2008.

1 On December 15, 2008, DTSC issued a Notice of Final Permit Decision for the  
2 Standardized Hazardous Waste Facility Permit, Series C, for the Evergreen Santa  
3 Maria Facility. DTSC's administrative record for this final permit decision included, in  
4 part:

- 5 1. Response to Comments document dated December 15, 2008;
- 6 2. Memoranda dated December 15, 2008, from Mr. Alfred Wong to the File for  
7 Evergreen Oil, Inc. – Santa Maria, listing the changes made by DTSC from  
8 Draft to Final Permit;
- 9 3. Final CEQA Notice of Exemption; and
- 10 4. Red line/strikeout version of the final permit showing changes from the draft  
11 to final permit.

12  
13 **C. PERMIT APPEAL PROCESS**

14 Pursuant to California Code of Regulations, title 22, section 66271.18,  
15 subdivision (a), the period for filing a petition for review (appeal) of this final Permit  
16 decision ended on January 14, 2009. One petition for review dated January 14, 2009,  
17 was received from Mr. Philip Chandler and the final permit decision was stayed,  
18 pursuant to California Code of Regulations, title 22, section 66271.14, subdivision  
19 (b)(2), pending review of the appeal. The Department's review is to determine which, if  
20 any, of the issues raised in the appeal meet the criteria for review pursuant to California  
21 Code of Regulations, title 22, section 66271.18.

22  
23 **IV. STANDARD OF REVIEW**

24 California Code of Regulations, title 22, section 66271.18, subdivision (a),  
25 provides that any person who filed comments, or participated in the public hearing, on a  
26 draft permit decision, during the public comment period for the draft permit decision,  
27 may petition the Department to review any condition of the final permit decision to the  
28 extent that the issues raised in the petition for review were also raised during the public

1 comment period for the draft permit decision, including the public hearing. In addition,  
2 any person who did not file comments or participate in the public hearing on the draft  
3 permit may petition the Department for review of the final permit decision, but only with  
4 respect to those changes in the final permit decision from the draft permit decision.

5 California Code of Regulations, title 22, sections 66271.18, subdivision (a) also  
6 provides, in pertinent part, that:

7  
8 The petition shall include a statement of the reasons supporting that  
9 review, including a demonstration that any issues being raised were raised  
10 during the public comment period (including any public hearing) to the  
11 extent required by these regulations and when appropriate, a showing that  
12 the condition in question is based on:

- 13 (1) a finding of fact or conclusion of law which is clearly erroneous, or
- 14 (2) an exercise of discretion or an important policy consideration which  
15 the Department should, in its discretion, review.

16 California Code of Regulations, title 22, section 66271.12, specifies the extent to  
17 which issues are required to be raised during the public comment period for a draft  
18 permit decision. Specifically, this section states that:

19  
20 All persons, including applicants, who believe any condition of a draft  
21 permit is inappropriate or that the Department's tentative decision to deny  
22 an application or prepare a draft permit is inappropriate, must raise all  
23 reasonably ascertainable issues and submit all reasonably available  
24 arguments and factual grounds supporting their position.

25 Because Petitioner submitted comments on the draft permit decision during the  
26 public comment period, Petitioner has standing to petition for review of any issues  
27 raised during the public comment period for the draft permit decision, as well as any  
28 issues that pertain to changes from the draft to the final permit decision.

1 **V. DISCUSSION AND FINDINGS**

2 The Department has reviewed the appeal and hereby responds to the arguments  
3 and comments presented in the appeal. The Petitioner's Appeal Comment and the  
4 Department's response are set forth below.

5 **Appeal Comment 1**

6  
7 It is noted that DTSC has once again ignored the "...at least 45 days for  
8 public comment." The period required by California Code of Regulations,  
9 title 22, section 66271.9(b)(1). The public comment period was arbitrarily  
10 determined by DTSC to end at 5:00 pm on September 15, 2008. It started  
11 on August 1, 2008. The regulations do not require just 44 2/3 days but  
12 require **no less** than 45 days. As DTSC so frequently states in its own  
13 documents, days are assumed to mean calendar days not business days  
14 unless other (sic) specified in its regulations. DTSC's public comment  
15 notice has therefore misrepresented the time allowed for public comment.  
16 Therefore, I am appealing all provisions in the final permit and none of  
17 them should be placed in force until after the decision on this appeal is  
18 made. The remedy being sought is re-notice and response to my  
19 comments that were submitted within the regulatory 45-day period.  
20 (emphasis in original)

21 **Response to Appeal Comment 1**

22 The Petitioner has failed to meet the burden to establish that the Department  
23 should grant review of this issue pursuant to the criteria set forth in California Code of  
24 Regulations, title 22, section 66271.18, subdivision (a). For this reason, the Department  
25 denies the petition for review of this Appeal Comment.

26 The Department notes that DTSC actually did accept and respond to all of  
27 Petitioner's comments. Thus, alleged defects in DTSC's notice regarding the length of  
28 the public comment period did not preclude the Petitioner from commenting on the draft  
permit. Further, there is no indication in the administrative record that an interested  
party was unable to participate or comment on the draft permit due to the alleged  
shortened duration of the public comment period provided in DTSC's notice.

1 Denial of review in this instance does not minimize the importance of full  
2 compliance with the applicable requirements of California Code of Regulations, title 22,  
3 sections 66271.9, 66271.21, and 66260.10, which determine the length of comment  
4 periods in the permit decision process. In this case, however, the only comments  
5 received on the draft Permit were from the Petitioner. DTSC accepted the comments  
6 and responded to them in the Response to Comments dated December 15, 2008.  
7 Although DTSC's Notice of the Public Comment Period indicated that all comments  
8 were to be postmarked or received by 5:00 p.m. on August 15, 2008, Petitioner has not  
9 shown that DTSC actually applied a shortened public comment period.

10 Therefore, the petition for review of this Appeal Comment is denied.

### 11 **Appeal Comment 2**

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13 Because DTSC refused to respond to public comments made during the  
14 legal public comment period, all provisions in the final permit are being  
15 appealed and none of them should be placed in force (sic) after the  
16 decision on this appeal is made.

### 17 **Response to Appeal Comment 2**

18 The Petitioner has failed to meet the burden to establish that the Department  
19 should grant review of this issue pursuant to the criteria set forth in California Code of  
20 Regulations, title 22, section 66271.18, subdivision (a). For this reason, the Department  
21 denies the petition for review of this Appeal Comment.

22 The administrative record shows that DTSC actually did accept and respond to  
23 all of Petitioner's comments on the draft Permit in the Response to Comments  
24 document as required by California Code of Regulations, title 22, section 66271.16.  
25 The administrative record does not support Petitioner's assertion that DTSC refused to  
26 respond to public comments made during the public comment period.

27 Therefore, the petition for review of this Appeal Comment is denied.  
28

1 **Appeal Comment 3**

2  
3 The permit is described as consisting of Attachment A, which is (sic)  
4 pages long, a standardized permit application, dated December 2006,  
5 which is "...hereby made part of this permit by reference." Only  
6 "Attachment A" is provided to the public as part of the review documents.  
7 This is an inappropriate and deceptive practice on the part of DTSC.  
8 Although DTSC touts transparency, it consistently fails to deliver as part of  
9 its permitting practice. All provisions in the final permit are being appealed  
10 because the permit notice failed to follow DTSC's expressed policies.

11 **Response to Appeal Comment 3**

12 The Petitioner has failed to meet the burden to establish that the Department  
13 should grant review of this issue pursuant to the criteria set forth in California Code of  
14 Regulations, title 22, section 66271.18, subdivision (a). For this reason, the Department  
15 denies the petition for review of this Appeal Comment.

16 When Petitioner raised this issue during the draft permit public comment period,  
17 DTSC responded as follows, in pertinent part:

18 **Response #1-1**

19 DTSC disagrees with the comment that it is "inappropriate and deceptive  
20 practice" in providing only Attachment A to the public as part of the review  
21 documents. Attachment A is the Hazardous Waste Facility Permit. Part  
22 III.1 of the Permit clearly states that the Standardized Permit Application is  
23 made a part of the Permit by reference. DTSC has made the Standardized  
24 Permit Application, as well as the draft permit, (sic) for review and  
25 comment during the public comment so that the public has access to all  
26 relevant information that is included in the permit making decision. The  
27 draft CEQA Notice of Exemption was also available for review. Members  
28 of the public have access to the documents at the repositories identified  
by DTSC in the public notice. The Notice of the public comment period of  
the draft permit decision, which is posted on the website, provided the  
public with information as to where these documents were available for  
review. None of the details of the draft permit are "concealed" and the  
entire permit, including incorporated and supporting documents, are  
available for public review.

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3                   As noted in DTSC's Response to Comments, the draft permit incorporates the

4 Standardized Permit Application dated April, 2008, into the Permit by reference. See

5 Part III, Condition 1. California Code of Regulations, title 22, section 66270.32,

6 subdivision (e), states that, "all permit conditions shall be incorporated either expressly

7 or by reference." When a permit application is incorporated by reference in a permit, it

8 becomes part of the permit and is embodied in the term "permit" as used in the

9 Department's regulations, including those regulatory provisions that set forth the

10 requirements that must be specified in the permit.

11                   With regard to the public availability of documents relating to the draft permit

12 decision, the administrative record shows that the draft permit, including the Application,

13 was placed in the information repositories described in the Public Notice. Furthermore,

14 there is no evidence in the record that Petitioner contacted the designated DTSC staff in

15 the Public Notice for help after being unable to access documents on line.

16                   Therefore, the petition for review of this Appeal Comment is denied.

17 **Appeal Comment 4**

18

19                   There do not appear to be regulations that distinguish between the Owner

20 of Real Property and the Owner of the Facility. Owners, as defined in the

21 regulations, are those who own the land and structures of the Facility. The

22 regulations do not provide for the creations of terms of art. DTSC fails to

23 distinguish who is responsible for Closure and Corrective Action in the

24 event that Evergreen Oil, Inc. files for bankruptcy---as many DTSC

25 facilities have done. The careful and deceptive parsing of ownership

26 description affects all of the regulatory obligations accruing to ownership.

27 DTSC fails to distinguish who is responsible for Closure and Corrective

28 Action if Evergreen Oil, Inc. is bankrupt. It appears that DTSC has created

an underground regulation as an accommodation to the Facility and "true"

Owner. The failure to identify the "owners" in regulation-consistent

language and to identify their responsibilities as to corrective action is

hereby appealed.

1 **Response to Appeal Comment 4**

2 The Petitioner has failed to meet the burden to establish that the Department  
3 should grant review of this issue pursuant to the criteria set forth in California Code of  
4 Regulations, title 22, section 66271.18, subdivision (a). For this reason, the Department  
5 denies the petition for review of this Appeal Comment.

6 When Petitioner raised this issue during the draft permit public comment period,  
7 DTSC responded as follows:

8  
9 **Response #1-2**

10 The term "owner", as defined in California Code of Regulations, title 22,  
11 means the owner of all contiguous land and structures, other  
12 appurtenances, and improvements on the land used for the treatment,  
13 transfer, storage, resource recovery, disposal, or recycling of hazardous  
14 waste; the term includes both the owner of the real property where the  
15 facility is located and the owner of the facility. In addition, Item 9 on the  
16 Instruction for the RCRA Part A Application states that the term "owner"  
17 includes the real property owner. Under the federal and state hazardous  
18 waste management laws, the facility operator, the facility owner and the  
19 real property owner are jointly, severally and strictly responsible for the  
20 closure, post closure and corrective action at the facility. DTSC first looks  
21 to the facility operator for the implementation of the closure, post closure  
22 and correction action at the facility. In the event the facility operator fails or  
23 refuses to do so, the facility owner and/or the real property owner will be  
24 required to carry out the required work. This Permit does not include any  
25 "underground regulations". The commentor is also incorrect in stating that  
26 the "careful and deceptive parsing of ownership description" was done to  
27 affect any regulatory obligation of the owner.

28 As noted in DTSC's Response to Comments, the regulatory term "Owner" as  
defined by California Code of Regulations, title 22, section 66260.10, includes the  
owner of real property. The language in the Permit could possibly be improved to  
explicitly state that the owner of real property is also an "Owner" of the "Facility."  
However, the Department finds that the landowner certification contained in the Part B  
of Permit Application, which is incorporated into the Permit by reference, is sufficiently

1 clear in stating the obligation of the landowner with respect to the obligations imposed  
2 by law and by the Permit:

3  
4 Land Owner Certification.

5 I [We] certify under penalty of law that I [we] am [are] familiar with the  
6 operations conducted by Evergreen Oil, Inc. of Evergreen Oil, Inc. – Santa  
7 Maria at 745-A West Betteravia Rd, Santa Maria, CA 93454 on the  
8 property owner by Carl Engel, that I [we] have reviewed the permit  
9 application, and to the best of my [our] knowledge, information, and belief,  
10 find it to be true and accurate. I [We] understand this application is being  
11 submitted for the purpose of obtaining a Standardized Permit to operate a  
12 hazardous waste storage treatment facility.

13 I [We] understand fully that I [we], as the land owner, located thereon, am  
14 [are] jointly and severally responsible for compliance with applicable  
15 provisions of the California Health and Safety Code, its implementing  
16 regulations and any permit issued pursuant to the application of the  
17 regulations.

18 (Signed by) Carl Engel

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Petitioner has failed to show why the explanations provided by DTSC are  
inadequate in addressing his concerns. Therefore, the petition for review of this Appeal  
Comment is denied.

**Appeal Comment 5**

The Permit does not explain the difference between Operation Plan and  
Permit Application. DTSC appears to use the terms interchangeably  
without any regulatory definition for the term Operation Plan. I petition that  
if a regulatory citation exists, that it be included to demonstrate that DTSC  
is nor (sic) merely creating terms of art and using it in an operative fashion  
as an underground regulation.

**Response to Appeal Comment 5**

The Petitioner has failed to meet the burden to establish that the Department  
should grant review of this issue pursuant to the criteria set forth in California Code of

1 Regulations, title 22, section 66271.18, subdivision (a). For this reason, the Department  
2 denies the petition for review of this Appeal Comment.

3 When Petitioner raised this issue during the draft permit public comment period,  
4 DTSC responded as follows:

5  
6 **Response #1-3**

7 The use of the term "Operation Plan" can be found in California Code of  
8 Regulations, Title 22, section 66260.10 which states "the Part B of permit  
9 application or part B meaning the operation plan described in section  
10 66270.14 through 66270.23 for a hazardous waste facility." Sections  
11 66270.14 through 66270.23 contain the general and specific requirements  
12 of the permit application. To the extent applicable, the term "Operation  
13 Plan is synonymous with the term "Standardized Permit Application".

14 The Petitioner has failed to show why the response provided by DTSC  
15 inadequately addresses his concerns. Therefore, the petition for review of this Appeal  
16 Comment is denied.

17 **Appeal Comment 6**

18 I petition that the Corrective Action section, of the Permit, be revised.  
19 California Code of Regulations, title 22, requires that corrective action be  
20 specified in the permit. No schedule of compliance (sic) provided in the  
21 draft permit and there is no evidence that any form of corrective action  
22 mechanism, such as a Corrective Consent Agreement, exists. DTSC is  
23 clearly not satisfying the corrective (sic) requirements in the applicable  
24 statutes and regulations for issuance of this permit.

25 **Response to Appeal Comment 6**

26 The Department grants review of this Appeal Comment, the substance of which  
27 was raised during the public comment period, for the reasons set forth below.

28 When Petitioner raised this issue during the draft permit public comment period,  
DTSC responded as follows (Response #1-4):

1  
2 Evergreen Oil previously submitted a Phase I Environmental Assessment  
3 which describes any releases that may have occurred at the facility.  
4 Based on this assessment, DTSC has concluded that no corrective action  
5 is currently needed at the facility. In the event that corrective action may  
6 be needed in the future, the Permit contains a condition and a mechanism  
7 for implementing any required corrective action.

8 The administrative record, however, does not, on its face, contain documents  
9 supporting DTSC's statement. For this reason, review of this comment is granted.

### 10 Appeal Comment 7

11 The AFR for corrective action is required by statute to be included in  
12 permits issued by DTSC. Why is not this addressed? Why isn't the AFR  
13 for corrective action addressed in the corrective (sic) section of the  
14 permit? By its silence on corrective action AFR, it is believed that this  
15 permit is inconsistent with and contradictory to the intent of H&SC  
16 25200.10(b). This section of H&SC requires that, "**When corrective  
17 action cannot be completed prior to issuance of the permit, the  
18 permit shall contain schedules of compliance for corrective action  
19 and assurances of financial responsibility for completing the  
20 corrective action. [H&SC 25200.10(b)]** Title 22 states **That the permit  
21 or order [emphasis added] will contain schedules of compliance for  
22 such corrective action (where such corrective action cannot be  
23 completed prior to issuance of the permit) and assurances of  
24 financial responsibility for completing such corrective action.**" [Title  
25 22 CCR 66264.101(b)] (emphasis in original).

### 26 Response to Appeal Comment 7

27 The Department grants review of this Appeal Comment, the substance of which  
28 was raised during the public comment period, which is granted because the need for  
financial assurance requirements is dependent on the outcome of the review of Appeal  
Comment 6; i.e., whether corrective action is required at the facility, and the basis for  
making that determination.

///

1 **Appeal Comment 8**

2  
3 I petition that the corrective action section of the Permit is rewritten to be  
4 specific as to what constitutes the "Facility" for purposes of corrective  
5 action. Specifically, despite Evergreen only using a fraction of the involved  
6 parcel, corrective action needs to be applicable across all of the property,  
7 not just that portion carved out for use by Evergreen.

8 **Response to Appeal Comment 8**

9 The Department grants review of this Appeal Comment, the substance of which  
10 was raised during the public comment period, for the reasons set forth below.

11 When Petitioner raised this issue during the draft permit public comment period,  
12 DTSC responded as follows:

13  
14 **Response #1-5**

15 Health and Safety Code section 25200.10(b) provides that "any corrective  
16 action required pursuant to this section shall require that corrective action  
17 be taken beyond the facility boundary where necessary to protect human  
18 health and safety or the environment, unless the owner or operator  
19 demonstrates to the satisfaction of the department or the unified program  
20 agency, whichever agency required the corrective action, that despite the  
21 owner's or operator's best efforts, the owner or operator is unable to  
22 obtain the necessary permission to undertake this action."

23 California Code of Regulations, Title 22, Section 66261.10<sup>1</sup> further defines  
24 a "hazardous waste facility" to mean: "For the purpose of implementing  
25 corrective action under articles 6, 15.5, or 17 of chapter 14 or article 18 of  
26 chapter 15 of this division, all contiguous property under the control of the  
27 owner or operator seeking a permit under Title 22, Division 4.5 of the  
28 California Code of Regulations. This definition applies to all contiguous  
property of an owner or operator implementing corrective action at a  
facility under Health and Safety Code sections 25200.10 or 25187, or  
federal RCRA section 3004(u) [Title 42, U.S.C., section 6924(u)] or federal  
RCRA section 3008(h) [Title 42, U.S.C., section 6928(h)]. This definition

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<sup>1</sup> This appears to be an incorrect citation. A more applicable citation is California Code of Regulations, title 22, section 66260.10.

1 also applies to all contiguous property of an owner or operator  
2 implementing removal or remedial action at an extra-large, large, medium,  
3 or small site where hazardous substances have been released or threaten  
4 to be released under Health and Safety Code sections 25187 or 25358.9  
5 where as provided for under the provisions of that section the Department  
6 has excluded the removal or remedial action at a site from the hazardous  
7 waste facilities permit required by Health and Safety Code section 25201.”

8 While accurately reciting the regulatory requirements for corrective action, DTSC  
9 does not state that the cited requirements were applied in this case. The Department  
10 cannot verify that the cited requirements were applied because the administrative  
11 record, does not, on its face, contain the necessary documentation. For this reason, the  
12 Department grants the petition for review of this Appeal Comment.

#### 13 **Appeal Comment 9**

14 I petition that the corrective action section of the Permit is rewritten to be  
15 specific as to what constitutes the “Facility” for purposes of corrective  
16 action. Specifically, despite Evergreen only using a fraction of the involved  
17 parcel, corrective action needs to be applicable across all of the property,  
18 not just that portion carved out for use by Evergreen.

#### 19 **Response to Appeal Comment 9**

20 Petitioner’s Appeal Comment 9 is a duplicate of Appeal Comment 8. For this  
21 reason, the Department denies the petition for review of this Appeal Comment.

#### 22 **Appeal Comment 10**

23 I petition that specific construction standards for the secondary  
24 containment be included as permit conditions in Section IV—since they do  
25 not appear to have been included in the “Application”.

#### 26 **Response to Appeal Comment 10**

27 The Department grants review of this Appeal Comment, the substance of which  
28 was raised during the public comment period, for the reasons set forth below.

1 When the issue was raised during the public comment period, DTSC responded  
2 that, "[t]he facility, including the secondary containment system, was constructed in  
3 accordance with the applicable provisions of the Uniform Building Code"  
4 (Response #1-8).

5 On its face, the administrative record does not provide any information to  
6 determine what specific building standards were used for the construction of the Facility  
7 and the secondary containment. Because the response to the comment was not  
8 responsive, review of this Appeal Comment is granted.

9 **Appeal Comment 11**

10  
11 I petition that a special condition be added to Section IV of the Permit to  
12 require that Unit #3 be fenced as required by the regulations to control the  
13 unit and that conditions be added as to removal of wastes from the sump.

14 **Response to Appeal Comment 11**

15 The Petitioner has failed to meet the burden to establish that the Department  
16 should grant a review of this issue pursuant to the criteria set forth in California Code of  
17 Regulations, title 22, section 66271.18, subdivision (a). For this reason, the Department  
18 denies the petition for review of this Appeal Comment.

19 When Petitioner raised this issue during the draft permit public comment period,  
20 DTSC responded as follows:

21 **Response #1-9**

22 Unit #3 is the Truck-to-Truck Transfer, Loading and Unloading area.  
23 California Code of Regulations, title 22, section 66264.14 requires the  
24 facility to prevent the unknowing entry, and minimize the possibility for the  
25 unauthorized entry, of persons or livestock onto the active portion of the  
26 facility, unless the facility can demonstrate that physical contact with the  
27 waste, structures, or equipment within the active portion of the facility will  
28 not injure unknowing or unauthorized persons or livestock which may  
enter the active portion of a facility.

1 This Unit is only used when tanker trucks are parked in this area while  
2 unloading their contents into the storage tanks, loading the tanker trucks  
3 from the storage tanks, transferring waste from containers to the storage  
4 tanks, or transferring waste from one tanker truck to another. After the  
5 loading or unloading activity is completed, the trucks depart. No  
6 hazardous waste remains in this Unit afterwards. The Unit-Specific  
7 Special Condition No. 1 for this Unit has been revised to read as follows:

8 "This Unit shall only be used for hazardous waste storage or transfer  
9 purposes when Permittee's personnel who are fully trained in the Facility's  
10 operations and procedures are present in the Unit."

11 This condition requires that Evergreen personnel be present at all times  
12 during any loading or unloading operations. The Evergreen employees will  
13 prevent any unauthorized person or livestock from entering this Unit.  
14 Since no hazardous waste will remain in the Unit after the trucks leave,  
15 there is no possibility for unknowing or unauthorized persons to be injured  
16 by physical contact with any hazardous waste.

17 This Unit is also surrounded by a berm which prevents any hazardous  
18 waste from leaving the area. It is also sloped toward a sump which when  
19 full, is pumped into either a storage tank or tanker truck. If any spills were  
20 to occur, the Evergreen employees will take corrective action to prevent  
21 offsite mitigation of the waste and implement any needed cleanup or  
22 emergency procedure.

23 With respect to fencing, the Department finds that DTSC adequately addressed  
24 Petitioner's comment in the Response to Comments document. Petitioner's statement  
25 that the unit must be "fenced as required by the regulations" is not supported by  
26 regulations, and Petitioner cites none.

27 With respect to the sump, the Department finds that the operation of the sump is  
28 sufficiently circumscribed and in conformity with California Code of Regulations, title 22,  
section 66264.175, subdivision (b)(5). We note that PART III, GENERAL CONDITION  
2 (a) of the Permit states in part that "[t]he Permittee shall comply with the terms and  
conditions of this Permit and the provisions of the Health and Safety Code and  
California Code of Regulations (Cal. Code Regs.), title 22, division 4.5." We also note  
that SECTION VII, INSPECTION PLAN, of the Part B of Permit Application includes a

1 sample inspection form as Attachment 7.1 that includes provision for daily inspection of  
2 the Tank Farm and Loading/Unloading Areas to include a check on “[a]rea clean and  
3 free of spills.” Finally, we note that PART V, SPECIAL CONDITION 10 of the Permit  
4 states the following:

5  
6 The Permittee shall collect all rainwater and wash water accumulated  
7 within the authorized units and determine whether it is hazardous waste; if  
8 it is hazardous waste, the Permittee shall manage it accordingly.

9 The Department finds that DTSC has adequately responded to the  
10 Petitioners comment on this issue. Therefore, the petition for review of this  
11 Appeal Comment is denied.

12 **Appeal Comment 12**

13  
14 I petition that a condition be added to Section IV that requires any tanker  
15 awaiting unloading to be within a fenced area as well as a condition to  
16 acknowledge that if the tanker is placed in Unit #3, that that placement  
17 constitutes acceptance of the waste.

18 **Response to Appeal Comment 12**

19 The Petitioner has failed to meet the burden to establish that the Department  
20 should grant a review of this issue pursuant to the criteria set forth in California Code of  
21 Regulations, title 22, section 66271.18, subdivision (a). For this reason, the Department  
22 denies the petition for review of this Appeal Comment.

23 This Appeal Comment is related to Appeal Comment 11 and the discussion of  
24 the fencing of Unit #3 contained therein is applicable here, and is incorporated by  
25 reference.

26 When Petitioner raised this issue of “acceptance” during the draft permit public  
27 comment period, DTSC responded, in part, as follows:

1 Response #1-11

2 In accordance with California Code of Regulations, title 22, section  
3 66279.10(a)(4) and this Permit, used oil transfer facilities shall determine,  
4 prior to accepting used oil, whether the used oil contains more than 1,000  
5 ppm total halogens by testing each shipment of used oil for total halogens.  
6 Used oil arrives at the facility in tanker truckers (sic) and is received. A  
7 sample of the waste is taken and waste analysis is performed. If the used  
8 oil meets the criteria in the waste analysis plan, it is unloaded into the  
9 storage tank. The term "acceptance" means that the used oil has been  
10 received and passed the criteria in the waste analysis and is ready to be  
11 unloaded to the storage tank. Evergreen Oil personnel will be present at  
12 all times during the waste analysis and unloading operations.

13 Therefore, the petition for review of this Appeal Comment is denied.

14 **Appeal Comment 13**

15 I petition that a condition be added to Section IV to explain specifically  
16 how intentional mixing will be recognized.

17 **Response to Appeal Comment 13**

18 The Petitioner has failed to meet the burden to establish that the Department  
19 should grant review of this issue pursuant to the criteria set forth in California Code of  
20 Regulations, title 22, section 66271.18, subdivision (a). For this reason, the Department  
21 denies the petition for review of this Appeal Comment.

22 When the issue was raised during the draft permit public comment period, DTSC  
23 responded that "DTSC will thoroughly review the facility's operating records and  
24 manifests to ensure that the Permittee is not intentional (sic) mixing used oil with any  
25 hazardous waste" (Response #1-15).

26 Part V of the Permit titled "SPECIAL CONDITIONS" includes conditions  
27 prohibiting the intentional mixing of wastes as follows:  
28

1 PART V.1(c). Used oil shall not be intentionally mixed with other  
2 hazardous waste, including household hazardous waste and hazardous  
3 waste from a conditionally exempt small quantity generator.

4 PART V.12. The Permittee shall not mix different waste streams together  
5 in containers, tanks, tanker trailers or trucks.

6 In addition, the Permit mandates that the Permittee adhere to the following  
7 requirements:

8  
9 PART V.4. The Permittee shall not conduct any hazardous waste  
10 management activities that would require a permit issued under RCRA or  
11 a RCRA-equivalent Hazardous Waste Facility Permit issued by DTSC.

12 PART V.6. The Permittee shall maintain an Operating Record at the  
13 Facility which documents all hazardous waste activities at the Facility,  
14 including the quantities and types of hazardous waste transferred to and  
15 from the Facility, the dates of arrival and departure of shipment, and the  
16 manifest document numbers.

17 The Petitioner has not shown why the special conditions already included  
18 in the Permit prohibiting the intentional mixing of used oil with any other waste  
19 are inadequate.

20 Therefore, the petition for review of this Appeal Comment is denied.

21 **Appeal Comment 14**

22 I petition that Section IV be modified to eliminate the exemption for testing  
23 for PCBs. The existing condition "legalizes" dilution of PCB containing  
24 loads with non-PCB containing truckloads.

25 **Response to Appeal Comment 14**

26 The Petitioner has failed to meet the burden to establish that the Department  
27 should grant review of this issue pursuant to the criteria set forth in California Code of  
28

1 Regulations, title 22, section 66271.18, subdivision (a). For this reason, the Department  
2 denies the petition for review of this Appeal Comment.

3 Section IV of the Permit does not, in fact, contain any such "exemption." Section  
4 V appears to be more pertinent to the subject of testing, though no express "exemption"  
5 is stated in this section or any other part of the Permit.

6 When Petitioner raised this issue during the draft permit public comment period,  
7 DTSC responded that because of technical limitations of field testing and because of  
8 the high cost of using an on-site laboratory, it is impractical to require fingerprinting of  
9 incoming loads for PCBs. Instead, DTSC asserted, a practical approach with sufficient  
10 safeguards has been provided (Paraphrase of Response #1-13).

11 The Department finds that this approach is an appropriate exercise of discretion  
12 in the performance of DTSC's regulatory function. Furthermore, the Petitioner has  
13 failed to demonstrate that the Permit condition in question is based on a finding of fact  
14 or conclusions of law that is clearly erroneous, or an exercise of discretion or an  
15 important policy consideration which the Department should, in its discretion, review.  
16 Therefore, review of Appeal Comment 14 is denied.

17 **Appeal Comment 15**

18  
19 I petition that a condition be added to Section IV to specify the repairs  
20 necessary to maintain the secondary containment. Specifically, something  
21 more secure than a simple bead of caulk or an even thinner coating must  
22 be provided to address any through-going cracks. DTSC must address  
23 how such cracks will be recognized and how they will be fixed.

24 **Response to Appeal Comment 15**

25 The Petitioner has failed to meet the burden to establish that the Department  
26 should grant review of this issue pursuant to the criteria set forth in California Code of  
27 Regulations, title 22, section 66271.18, subdivision (a). For this reason, the Department  
28 denies the petition for review of this Appeal Comment.

1           When Petitioner raised this issue during the draft permit public comment period,  
2 DTSC responded as follows (Response #1-24):

3  
4           It is not appropriate for DTSC to pre-proscribe what corrective measures  
5 are to be used since corrective measures are performed or applied on a  
6 case-by-case basis. For example, if the floor developed a hair-lined crack,  
7 it may be as simple as filling the crack and reapplying the chemical  
8 resistant coating. A growing gap may call for a different corrective  
9 measure which may include replacing the entire concrete slab. It will  
10 depend on the situation.

11           It is reasonable to recognize, as DTSC has done, that appropriate corrective  
12 action can vary widely when assessing necessary repairs to secondary containment  
13 units. Likewise, it is reasonable to recognize that corrective measures for repairing the  
14 secondary containment should be conducted on a case-by-case basis and are  
15 dependent on the situation. Therefore, review of Appeal Comment 15 is denied.

16  
17 **Appeal Comment 16**

18           I petition that this permit be re-noticed and all comments received during a  
19 true 45-day comment period be responded to. I further petition that the  
20 permittee (sic) required to have in place corrective action AFR before the  
21 permit is issued and include a compliance schedule in the permit before its  
22 re-noticed.

23 **Response to Appeal Comment 16**

24           The Petitioner has failed to meet the burden to establish that the Department  
25 should grant review of this issue pursuant to the criteria set forth in California Code of  
26 Regulations, title 22, section 66271.18, subdivision (a). For this reason, the Department  
27 denies the petition for review of this Appeal Comment.

28           Petitioner repeats elements of Appeal Comments 1, 2, 6 and 7. No new reasons  
or arguments are presented in support of this Appeal Comment. Therefore, the

1 Department's response to the individual Appeal Comments stands and the petition for  
2 review of this appeal comment is denied.

3  
4 **VI. ORDER**

5 For the reasons set forth above, the Permit Appeals Officer grants review of  
6 Appeal Comments 6, 7, 8 and 10. Review of Appeal Comments 1, 2, 3, 4, 5, 9, 11, 12,  
7 13, 14, 15 and 16 is denied.

8 Pursuant to California Code of Regulations, title 22, section 66271.18,  
9 subdivision (c), the Department will issue a public notice to set a briefing schedule for  
10 Appeal Comments 6, 7, 8 and 10, for which review has been granted. Interested parties  
11 will be given an opportunity to file written arguments pertaining to these four appeal  
12 comments in accordance with the briefing schedule.

13 The written arguments should include all reasonably available arguments and  
14 factual grounds supporting their position, including all supporting material. To assure  
15 complete consideration, all supporting materials should be included in full and may not  
16 be incorporated by reference, unless they are already part of the administrative record,  
17 or consist of State or Federal statutes and regulations, Department or USEPA  
18 documents of general applicability, or other generally available reference materials.  
19 Additionally, the briefing documents must provide facts showing the technical,  
20 regulatory or statutory basis for the requested outcome, and must be accompanied by  
21 the data and other reference material that is used to support the argument, including  
22 citations to the administrative record.

23 All arguments pertaining to the Appeal Comments that have been granted review  
24 must be signed, and filed in writing, received by the date specified in the public notice,  
25 and addressed as follows:

26 ///

27 ///

28 ///

1 Mr. Mohinder S. Sandhu, P.E.  
2 Permit Appeals Officer  
3 Department of Toxic Substances Control  
4 8800 Cal Center Drive  
5 Sacramento, California 95826

6 An additional electronic copy of the briefing arguments may be e-mailed to  
7 appeals@dtsc.ca.gov.

8 Pursuant to California Code of Regulations, title 22, section 66271.15,  
9 subdivision (a)(1), contested permit conditions and those conditions that are not  
10 severable from contested permit conditions are stayed during the pendency of an  
11 appeal. Appeal Comment 10, for which review has been granted, has a broad  
12 operational impact and relates to matters that are not severable from the other,  
13 uncontested conditions. Therefore, the stay of the entire Permit shall remain in effect.

14  
15 Dated: June 24, 2009

16  
17 //original signed by//

18 \_\_\_\_\_  
19 Mohinder S. Sandhu, P.E.  
20 Permit Appeals Officer  
21 Department of Toxic Substances Control  
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