

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

4 In the Matter of:

5 Advanced Environmental, Inc.  
6 13579 Whittram Avenue  
7 Fontana, California 92335

8 EPA ID No. CAT 080 025 711

Case No.: No. HWCA 07/08-P003

DTSC PERMIT RENEWAL TEAM BRIEF  
RE PETITION FOR REVIEW

California Code of Regulations  
Title 22, section 66271.18

9  
10 **I. INTRODUCTION**

11 This brief submits arguments on behalf of the Department of Toxic Substances  
12 Control (DTSC) Permit Renewal Team (the Team). On September 24, 2007, DTSC  
13 issued a final Standardized Hazardous Waste Facility Permit (Permit) decision to  
14 Advanced Environmental, Inc. (AEI), a storage and treatment facility located at 13579  
15 Whittram Avenue, Fontana, California (the Facility). The Facility manages used oil, oily  
16 wastes and wastewater, oily solids and used anti-freeze. On October 23, 2007, AEI  
17 (Petitioner and Permittee) filed a petition for review (appeal) of DTSC's final Permit  
18 decision. On February 13, 2008, DTSC issued an Order that denied the Petitioner's  
19 petition for review of comments 1 through 3 and comment 21 and granted review of  
20 Appeal Comments 4 through 20, which pertain to Special Conditions N and O of the  
21 Permit (the February 13 Order). These two Special Conditions govern testing for  
22 halogens and Polychlorinated Biphenyls (PCBs). DTSC subsequently announced a  
23 briefing period to receive arguments concerning Appeal Comments 4 through 20.

24  
25 **II. ARGUMENTS**

26 Following are the Team's arguments concerning Appeal Comments 4 through  
27 20.

1 **Appeal Comment 4:**

2 **Part V., Condition N.2.c. (1)(A)** states:

3 "[t]he Permittee may rebut the rebuttable presumption pursuant to California  
4 Code of Regulations, title 22, section 66279.10(b), (b)(1) and (2) only through  
5 analytical testing in accordance with the test methods specified in California  
6 Code of Regulations, title 22, section 66279.90(b) or by complying with  
7 conditions N.2.c.(1)(B) through (G) below, which are the only other means of  
8 demonstrating that the used oil does not contain halogenated hazardous waste  
9 for the purposes of California Code of Regulations, title 22, section 66279.10(b),  
10 (b)(1) and (2) and this Permit."

11 **Petitioner's Appeal Comment.** Method 8021A is one of the methods listed in  
12 California Code of Regulations, title 22, section 66279.90(b) that may be used to rebut  
13 the rebuttable presumption. The Petitioner states that Method 8021A has been updated  
14 by the U.S. Environmental Protection Agency (USEPA) with Method 8021B and  
15 therefore, Condition N.2.c.(1)(A) should be modified to allow use of Method 8021B.

16 **Team's Response.** The Team requests that Comment 4 be denied because the  
17 Petitioner's proposed change to the condition would violate regulatory requirements.  
18 California Code of Regulations, title 22, section 66279.90(b) does not list updated  
19 versions of the specified tests or Method 8021B as acceptable test methods.  
20 Section 66279.90(b) allows *only* the four (4) test methods listed in that section to be  
21 used to rebut the rebuttable presumption. If and when California Code of Regulations,  
22 title 22, section 66279.90(b) is amended to include an expanded list of acceptable  
23 tests, Condition N.2.c.(1)(A) as currently drafted will allow the Permittee to use those  
24 new tests.

25 **Appeal Comment 5:**

26 **Part V., Condition N.2.c. (1)(B)** states:

27 "[t]he Permittee shall obtain from the transporter a copy of the Generator's Waste  
28 Profile Worksheet (GWPW), attached to the manifest."

29 **Petitioner's Appeal Comment.** The Petitioner requests three (3) changes to  
30 this condition. First, Petitioner wants the Permittee to have the option to obtain the  
31 information from the generator or the transporter. Second, Petitioner wants the

1 condition to require the Permittee to also obtain the analytical results that were relied  
2 upon to rebut the presumption. Third, Petitioner requests that the phrase "attached to  
3 the manifest" be deleted because Petitioner states that the GWPW and the analytical  
4 results are not attached to the manifest.

5 **Team's Response.** The Team recommends that the first component of the  
6 comment (option to obtain documentation from the generator instead of the transporter)  
7 be denied for reasons discussed below. The Team recommends that the second and  
8 third components (obtain analyticals along with the GWPW and delete the phrase  
9 "attached to the manifest") be granted. Finally, the Team requests that the Petitioner's  
10 suggested revisions to the condition be rejected and the Team's suggested revisions  
11 provided below be adopted

12 The Team does not agree with Petitioner's claim that the option to obtain the  
13 information from the generator should be added to the condition because this approach  
14 will undermine the dependability of the system. Based on Petitioner's comments on the  
15 draft permit, the final Permit now provides flexibility to the Permittee by not requiring the  
16 Permittee to test each load that exceeds halogen criteria. As requested by the  
17 Permittee in comments on the draft permit, the final Permit allows the Permittee to rely  
18 on testing conducted by others "provided specific requirements are met" (See,  
19 Response to Comment 4-4). If the transporter brings documentation from the generator  
20 that accompanies the manifest with the load, then there will be a guarantee that the  
21 Permittee will be informed prior to accepting the waste whether each individual load did  
22 or did not have greater than or equal to 1000 ppm halogens. If the Permittee is allowed  
23 to rely solely on documentation from the generator that may arrive prior to the load,  
24 there is no guarantee that the Permittee's technician that processes the load will be able  
25 to retrieve the information from a particular generator and review it carefully in order to  
26 verify the halogen content of each specific load prior to accepting the load. The  
27 condition's current requirement to obtain the documentation from the transporter will  
28 provide that necessary certainty, protect the integrity of the process and ensure that

1 critical information is available and reviewed before a load is accepted. For these  
2 reasons, the Team believes it is important for the condition to clarify that the GWPW  
3 and the analyticals must *accompany* the manifest for the waste.

4 The Team agrees with the Petitioner's requests to add "analyticals" to the  
5 condition and delete the phrase "attached to the manifest". The Team recommends  
6 the following revised condition N.2.c.(1)(B).

7 "The Permittee shall obtain from the transporter a copy of the Generator's Waste  
8 Profile Worksheet (GWPW) and the analytical results for the halogen content  
9 used to rebut the presumption. This information shall accompany the manifest."

10 **Appeal Comment 6:**

11 **Part V., Condition N.2.c.(1)(C) states:**

12 "The Permittee shall review this documentation and confirm in the operating log  
13 that the GWPW: i) is less than 365 days old, ii) is based on a representative  
14 sample of the waste, and iii) was analyzed by a laboratory certified in accordance  
15 with the Environmental Laboratory Accreditation Program by using the test  
16 methods specified in California Code of Regulations, title 22, section  
17 66279.90(b)."

18 **Petitioner's Appeal Comment.** First, Petitioner objects to the term "confirm in  
19 the operating log" because Petitioner misinterprets it to mean that the Facility personnel  
20 must consult the operating log and retrieve and review information about the waste  
21 *before* the Facility accepts certain waste. Second, Petitioner objects to the requirement  
22 that the Facility confirm that the GWPW is based on a representative sample of the  
23 waste. Petitioner asserts it has no means of confirming that the generator's waste  
24 analysis was based on a representative sample of the waste, and should not be  
25 required to do so. Third, Petitioner claims that the scope of the requirement for  
26 analyticals prepared by a laboratory certified in accordance with the Environmental  
27 Laboratory Accreditation Program is overbroad because this requirement only applies  
28 when analyticals will be used to rebut the presumption

**Team's Response.** The Team requests that the first component of the appeal  
comment (delete the requirement to "confirm in the operation log") be denied because it

1 is based on a misunderstanding about the word "confirm". The Team did not intend  
2 "confirm" to mean that the Facility personnel have to retrieve and review documentation  
3 from the operation log *prior* to accepting the waste. Instead, the term "confirm in the  
4 operating log" means to "enter or document" in the operating log *after* the waste is  
5 accepted. The Team agrees with Petitioner that the term "record" may be used instead  
6 of "log" because the terms are used interchangeably. The Team recommends that its  
7 revisions to the condition suggested below be adopted to clarify these issues.

8 The Team requests that the second component of the comment (request to  
9 delete the requirement to confirm the generator's waste analysis was based on a  
10 representative sample of the waste) be denied because Petitioner's assertion that it is  
11 not possible to comply with the requirement is not accurate and deleting the  
12 requirement would be inconsistent with the Facility's Waste Analysis Plan (WAP).  
13 Section III.B of the Standardized Permit Application for the Facility states "The pre-  
14 approval process centers around the Generator's Waste Profile Worksheet, GWPW,  
15 and a representative sample of the waste...The representative sample may be provided  
16 by the generator, with certification that it is representative of the actual waste stream  
17 and was taken and preserved in accordance with 40 CFR 261, Appendix 1." (emphasis  
18 added.) This indicates the condition as currently drafted can be implemented and is  
19 consistent with the Facility's WAP.

20 The third component of the comment (assertion that the requirement for  
21 analyticals to be prepared by a lab certified in accordance with the Environmental  
22 Laboratory Accreditation Program is overbroad) should be denied because this  
23 comment misinterprets the requirement, which was intended to apply only to analyticals  
24 used to rebut the presumption. Nonetheless, to address Petitioner's concern, the  
25 Team requests that the condition be revised to clarify that the certification requirement  
26 only applies when analyticals will be used to rebut the presumption.  
27  
28

1 For the above reasons, the Team requests that the Petitioner's suggested  
2 revisions to the condition be rejected and the Team recommends that the following  
3 revisions and clarifications for Condition N.2.c.(1)(C) be adopted:

4 "The Permittee shall review this documentation prior to accepting the waste and  
5 subsequently shall enter into the operating record evidence that the Permittee  
6 reviewed the documentation and verified that: i) the GWPW is less than 365  
7 days old, ii) the GWPW is based on a representative sample of the waste, and  
8 iii) analytical test data used to rebut the presumption was prepared by a  
9 laboratory certified in accordance with the Environmental Laboratory  
10 Accreditation Program by using the test methods specified in California Code of  
11 Regulations, title 22, section 66279.90(b)."

12 **Appeal Comment 7:**

13 **Part V., Condition N.2.c.(1)(E) states:**

14 "[t]he Permittee shall review the documentation discussed above and enter into  
15 the operating log the reason that the rebuttable presumption can be rebutted  
16 pursuant to California Code of Regulations, title 22, section 66279.10(b), (b)(1)  
17 and (2)."

18 **Petitioner's Appeal Comment.** Petitioner asserts that the requirement to enter  
19 into the "operating log" the reason that the rebuttable presumption can be rebutted is  
20 redundant and unnecessary because "[a] generator may sign a separate Waste Oil  
21 Certification letter certifying that its oil has been rebutted per 22 CCR sections  
22 66279.10(b) (1) and (b) (2) and that the used oil has not been mixed with any  
23 halogenated hazardous wastes." Petitioner states that (a) such letters accompany the  
24 GWPW and the manifest or are submitted in advance and for used oils containing  
25 greater than 1,000 parts per million ("ppm") of halogens; (b) Permittee's review of this  
26 certification statement is an appropriate procedure to rebut the presumption; and (c) the  
27 analytical results (as well as the manifest and GWPW) are maintained in the operating  
28

1 record and the condition should be revised to properly reflect actual procedures and  
2 documentation in the operating record.

3  
4 **Team's Response.** The Team recommends that this appeal comment and its  
5 proposed revisions to the condition be denied because the purpose of the condition is to  
6 require the Facility to provide evidence in the Facility's records of the *reason(s), based*  
7 *on testing and data analysis, that the rebuttable presumption may be rebutted pursuant*  
8 *to California Code of Regulations, title 22, section 66279.10(b)(1) and (2).* The  
9 Petitioner's proposed revisions would remove obligations on the Permittee to review  
10 and verify analytical information, and would instead simply allow the Facility to place a  
11 generator's certification, which may be based on "generator knowledge" rather than  
12 testing and analysis, in the record.

13 Used oil containing more than 1,000 ppm total halogens is presumed to be a  
14 RCRA hazardous waste because it has been mixed with a halogenated hazardous  
15 waste listed in Subpart D of Part 261, Title 40, Code of Federal Regulations. Failure to  
16 rebut the presumption means that the used oil must be managed as a hazardous waste  
17 and the Permittee must reject the load pursuant to the Permit's Condition N.2.a.(1) and  
18 b. In its comments on the draft permit, the Permittee objected to an obligation to test  
19 every load. (See Comment 4-4 in the Response to Comments document.). As  
20 discussed in the Response to Comments, the Permit's Special Condition N.2.c. now  
21 offers the Permittee the flexibility to rely on the generator's testing rather than requiring  
22 the Permittee to conduct its own testing to rebut this presumption. (See Response to  
23 Comment 4-4)

24 The Petitioner's comment ignores the purpose of condition N.2.c.(1)(E) and the  
25 Petitioner's proposed revisions undermine the effectiveness and enforceability of the  
26 Permit. This condition becomes applicable only *after* the Facility has confirmed that  
27 the used oil contains halogens exceeding 1000 ppm (See Condition N.2.a.) If used oil  
28 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

1 waste and the Facility cannot accept it as used oil. Petitioner's proposal to allow the  
2 Permittee to rely on "a signed certification by the generator that the used oil was not  
3 mixed with any halogenated hazardous waste" does not make sense because: (1) this  
4 generator's certification would have been prepared before the Permittee received and  
5 tested the waste, and (2) the certification would not change the Permittee's test results  
6 showing halogens at levels greater than 1000 ppm. The used oil would still contain  
7 halogens at levels above 1000 ppm, despite the generator's certification. Therefore, the  
8 Permittee can only demonstrate through analytical testing, either by the Permittee or the  
9 generator, that (1) the earlier test results were erroneous; or (2) the used oil does not  
10 contain significant concentrations of any of the individual halogenated listed hazardous  
11 wastes.

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

17 In conclusion, the Team recommends that the comment and Petitioner's revised  
18 condition be denied. Nonetheless, to clarify the condition, the Team recommends the  
19 following revised Condition N.2.c.(1)(E).

20 "[t]he Permittee shall review the documentation discussed above and place it into  
21 the operating record. This documentation shall contain the GWPW and the  
22 analyticals that demonstrate that the rebuttable presumption can be rebutted  
23 pursuant to California Code of Regulations, title 22, section 66279.10(b), (b)(1)  
24 and (2)."

24 **Appeal Comment 8:**

25 **Part V., Condition N.2.c.(1)(A) and (2) states:**

26  
27 "[t]he Permittee may rebut the rebuttable presumption pursuant to California  
28 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

1 Code of Regulations, title 22, section 66279.90(b) or by complying with  
2 conditions N.2.c.(1)(B) through (G) below, which are the only other means of  
3 demonstrating that the used oil does not contain halogenated hazardous waste  
4 for the purposes of California Code of Regulations, title 22, section 66279.10(b),  
5 (b)(1) and (2) and this Permit."

6 **Petitioner's Appeal Comment.** Petitioner raises the same issues as those  
7 presented in Comment 4 above and requests the same type of revisions to the condition  
8 as in Comment 4.

9 **Team's Response.** The Team recommends that Appeal Comment 8 and the  
10 Petitioner's suggested revisions be denied for the same reasons stated in the Team's  
11 arguments concerning Appeal Comment 4, incorporated herein by reference.

12 **Appeal Comment 9:**

13 **Part V., Condition N.2.c.(3)** states:

14 "Option 3. For used oil received from multiple generators (Consolidated Loads)  
15 and when the transporter provides fingerprint test data for each generator using  
16 EPA Test Method 9077."

17 **Petitioner's Appeal Comment.** The Petitioner requests that the parenthetical  
18 reference to "(Consolidated Loads)" be deleted from the condition for clarity.

19 **Team's Response.** The Team requests that this comment and the Petitioner's  
20 suggested revision to the condition be granted.

21 **Appeal Comment 10:**

22 **Part V., Condition N.2.c.(3)(B)(i)** states:

23 "The Permittee shall obtain the fingerprint test data referenced in N.2.c.(3) above  
24 from the transporter; and (i) For any generator whose used oil has a  
25 concentration that exceeds 1000 ppm total halogens, the Permittee shall receive  
26 and have on file proper documentation and follow the procedures in option 1  
27 above."  
28

1           **Petitioner's Appeal Comment.** The Petitioner claims this condition  
2 incorporates the problems identified in Option 1, which the Petitioner appealed in  
3 various comments above.

4           **Team's Response.** The Team incorporates its arguments regarding Comments  
5 4 through 8 herein by reference and recommends that this comment be denied.  
6

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8           **Appeal Comment 11:**

9           **Part V., Condition N.2.c.(4)** states:

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

13           **Petitioner's Appeal Comment.** The Petitioner requests that the phrase  
14 "(Consolidated Loads)" be deleted from the condition for clarity based on the same  
15 reasons it described in Comment 9.

16           **Team's Response.** The Team recommends that Comment 11 be granted and  
17 that the phrase "(Consolidated Loads)" be deleted from this condition.  
18

19           **Appeal Comment 12:**

20           **Part V., Condition N.2.c.(4)(A)(ii)** states:

21           "For any generator whose used oil has a concentration that exceeds 1000 ppm  
22 total halogens, the Permittee shall receive and have proper documentation on file  
23 prior to acceptance and follow the procedures in option 1 above."

24           **Petitioner's Appeal Comment.** The Petitioner claims this condition  
25 incorporates the problems identified in Option 1, which the Petitioner appealed in  
26 various comments above.  
27  
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1           **Team's Response.** The Team incorporates its arguments regarding Option 1 in  
2 Comments 4 through 8 herein by reference and recommends that this comment be  
3 denied.

4  
5 **Appeal Comment 13:**

6 **Part V., Condition N.2.c.(5)** states:

7           "Option 5. For used oil received from multiple generators (Consolidated Loads)  
8 and when the transporter cannot provide fingerprint data or retained samples as  
9 discussed in Options 3 and 4 above, the Permittee may rebut the presumption  
10 only through analytical testing in accordance with the test methods specified in  
11 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)."

12  
13 **Petitioner's Appeal Comment.** First, Petitioner requests that the phrase  
14 "(Consolidated Loads)" be deleted for clarity, based on the same reasons stated in  
15 previous comments. Second, Petitioner requests deletion of the phrase "accompanied  
16 by a determination that the rebuttable presumption is rebutted pursuant to California  
17 Code of Regulations, title 22, section 66279.10(b), (b) (1) and (2)." Petitioner argues  
18 that the analytical test results produced pursuant to California Code of Regulations, title  
19 22, section 66279.10(b) are the determination and thus there is no need to create an  
20 extra "determination" document that is not called for by the regulations.

21 **Team's Response.** The Team recommends that (a) the substance of this appeal  
22 comment be granted, (b) but that Petitioner's suggested revisions to the condition be  
23 rejected and (c) the Team's suggested revisions to the condition below be adopted.  
24 The Team agrees that the term "(Consolidated Loads)" should be deleted for clarity.  
25 But the Petitioner has misinterpreted the term "determination". The condition is not  
26 intended to require the Permittee to make an extra determination separate from the  
27 analytical testing. To clarify the condition, the Team recommends that the term  
28 "accompanied by a determination" be deleted and replaced with "that demonstrates".  
The Team recommends adoption of the following revised Condition N.2.c.(5).

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

6 **Appeal Comment 14:**

7 **Part V., Condition O.2.** states:

8 "All outgoing used oil shall be tested for PCBs to ensure that the used oil load  
9 does not contain PCBs at a concentration of 2 ppm or greater. The Permittee  
10 shall test the used oil from each storage tank for PCBs pursuant to the  
11 procedures specified in Condition O.2.a below or the Permittee shall comply with  
the requirements in Condition O.2.b, which provide for the receiving facility to test  
the used oil for PCBs."

12  
13 **Petitioner's Appeal Comment.** Petitioner appeals this condition because it  
14 claims the Permittee should not limited to the two (2) testing options provided in the  
15 condition. Petitioner believes it is impractical and unfair to require the Petitioner to test  
16 on-site or to require a receiving facility to follow the PCB testing procedures required by  
17 this Permit, which may be different than the procedures the receiving facility usually  
18 follows and which may differ from the receiving facility's Waste Analysis Plan (WAP).

19 Petitioner claims this condition places Petitioner at a competitive disadvantage  
20 with transporters who otherwise can take their oil directly to DeMenno/Kerdoon (D/K) or  
21 other receiving facilities. Petitioner incorporates by reference comments on behalf of  
22 D/K in its appeal of the American Oil permit that raised numerous environmental,  
23 regulatory, policy and legal issues regarding a similar PCB testing procedure in the  
24 American Oil permit. Petitioner asserts that the Permit should acknowledge the existing  
25 in-state management scheme and allow waste to be tested at permitted in-state  
26 facilities pursuant only to the facilities' WAPs. Petitioner acknowledges that it may  
27 make sense to (a) require out-of-state facilities to test individual trucks because the oil  
28 could legally be commingled with high PCB oil; or (b) require trucks bound for out-of-  
state facilities to be tested on a truck by truck basis for similar reasons. However,

1 Petitioner argues it makes no sense to do so for the Permittee, which sends all of its oil  
2 to the D/K facility. Petitioner requests that this condition or Condition O.2.b be revised to  
3 allow the Permittee to send used oil to D/K and be tested for PCBs according to the  
4 D/K's WAP only—not pursuant to the procedure outlined in Petitioner's Permit.

5 **Team's Response.** The Team recommends that this comment be denied for  
6 several reasons. First, this condition provides the Permittee with flexibility it requested  
7 to have the waste tested at the receiving facility rather than at the Permittee's Facility,  
8 but with enough safeguards to ensure the integrity of the process. (See, Response to  
9 Comment 4-3.) The Permit condition is intended to ensure that a receiving facility  
10 accepts legally authorized used oil. The condition ensures that Petitioner's Facility and  
11 receiving facilities accept used oil and not another type of hazardous waste  
12 contaminated with PCBs. Although the testing procedures this condition requires for  
13 receiving facilities to implement may *differ* from their current waste acceptance  
14 practices, requirements of this condition are not intended to contradict or conflict, with  
15 any receiving facility's WAP. The condition is intended to provide procedures that any  
16 receiving facility could follow *in addition to the procedures outlined in its WAP.*

17 Petitioner's claim that the condition's testing procedures for the receiving facility  
18 conflict with D/K's WAP are not substantiated and are inaccurate. The Team reviewed  
19 the D/K facility's WAP and concluded that Condition O.2.'s testing procedures for  
20 PCBs in used oil are consistent with D/K's WAP. There is a difference in management  
21 practices for used oil prior to testing, but nothing in the D/K permit, WAP or application  
22 precludes D/K from sampling and testing each truckload of used oil in accordance with  
23 Condition O.2. D/K is allowed to consolidate waste prior to testing, but none of the  
24 documents referenced above preclude D/K from also testing Petitioner's loads prior to  
25 consolidation.

26 Petitioner's comment also fails to recognize that the receiving facility is providing  
27 a contractual service to the Permittee. If the receiving facility does not wish to abide by  
28 the instructions contained in Condition O.2.b., the Permittee has the option to send the

1 waste to another receiving facility that will follow the Permittee's instructions. Used oil  
2 recycling facilities in California operated by Industrial Services and Evergreen test used  
3 oil in each in-coming truck before it is unloaded into the tanks and neither facility has  
4 cited backlogs or other negative impacts.<sup>1</sup>

5 Petitioner's claim that the Permit places Petitioner at an unfair disadvantage vis-  
6 à-vis transporters is not germane because the Petitioner is regulated as a permitted  
7 treatment, storage and disposal facility. Petitioner is subject to additional requirements  
8 to ensure the used oil it receives and manages is in fact used oil.

9 With regard to the regulatory, policy and legal arguments that Petitioner  
10 incorporated from the American Oil appeal, the Team responds as follows. Imposing  
11 testing requirements for PCBs on used oil transfer facilities on a permit by permit basis  
12 is not an underground regulation because it implements existing statutory and  
13 regulatory authority. The requirement to include PCB testing as a permit condition is  
14 intended to ensure that a receiving facility accepts legally authorized used oil. DTSC  
15 may impose any conditions on a hazardous waste facilities permit that are consistent  
16 with the intent of Chapter 6.5, Division 20, Health and Safety Code. (Health & Saf.  
17 Code § 25200(a).) Permits are required to contain conditions necessary to meet the  
18 operating requirements for permitted facilities. (Cal. Code Regs., tit. 22, § 66270.32  
19 (b)(1).) Permits shall also contain terms and conditions DTSC determines necessary to  
20 protect human health and the environment. (Cal. Code Regs., tit. 22, § 66270.32 (b)(2).)  
21 For these reasons, the condition does not violate the Administrative Procedures Act  
22 (APA) (Gov. Code §§ 11340 *et. seq.*). DTSC considered and rejected D/K's  
23 environmental arguments in the Final Decision on Appeal from Facility Permit Decision  
24 in the Matter of American Oil (Docket HWCA 06/07-P0001) issued on October 19, 2007  
25 (the American Oil Final Decision). In that decision, DTSC concluded 1) the idling

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28 <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.

1 emissions or wait time will be significantly reduced; 2) the number of shipments of used  
2 oil rejected at treatment facilities will be reduced because suspect shipments will be  
3 tested prior to transport; and 3) the inadvertent mixture of used oil with used oil  
4 containing PCBs will be reduced. (See, Section 2 of DTSC's response to Appeal  
5 Comment 1 of the American Oil Final Decision, incorporated herein by reference.)

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

15 **Appeal Comment 15:**

16 **Part V., Condition O.2.a(4)** states:

17 "If the used oil contains PCBs at a concentration of 2 ppm or greater, a second  
18 sample shall be obtained and tested after cleaning the sampling equipment using  
19 the permanganate cleanup procedure."

20 **Petitioner's Appeal Comment.** Petitioner requests that the condition be  
21 amended to allow use of separate equipment for the second testing and to allow use of  
22 other cleanup procedures besides the permanganate cleanup procedure.

23 **Team's Response.** The Team recommends that the substance of the comment  
24 be granted, but that Petitioner's suggested revisions to the condition be rejected  
25 because they do not ensure that the alternative cleaning technique meets DTSC's  
26 standards and regulatory standards. The Team recommends that Condition O.2.a(4) be  
27 revised as follows:

28 "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

1 using sampling equipment that is new or has been cleaned using a) the  
2 permanganate cleanup procedure (EPA Method 3665A; or b) an appropriate  
3 decontamination procedure that has been approved in writing by DTSC for use at  
4 the Facility."

5 **Appeal Comment 16:**

6 **Part V., Condition O.2.b.(1) and b.(2) states:**

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

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

15 (2) Do not unload the truck or commingle the Permittee's used oil load with any  
16 other used oil at the receiving facility until PCBs testing indicated that the  
17 Permittee's load does not contain PCBs at a concentration of 2 ppm or greater."

18 **Petitioner's Appeal Comment.** Petitioner claims it sends its used oil to the D/K  
19 facility and the conditions in Part V., Condition O.2.b.(1)and(b)(2) are inconsistent with  
20 D/K's Waste Analysis Plan (WAP). Petitioner presents many of same the arguments it  
21 offered in Comment 14 above. Petitioner also argues that as noted in comments  
22 submitted on behalf of D/K in the American Oil appeal, the standards imposed in these  
23 conditions constitute an underground regulation with potentially significant  
24 environmental consequences due to the failure to comply with the APA and CEQA.

25 **Team's Response.** The Team recommends that this comment and Petitioner's  
26 requested revisions to the condition be denied for the reasons cited in the Team's  
27 argument about D/K's WAP in Comments 14 and 16 above, incorporated herein by  
28 reference and for the reasons discussed below. Petitioner's claims about underground  
regulations should be denied for the following reasons. First, 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

1 is not an underground regulation because it implements existing statutory and  
2 regulatory authority. The requirement to include PCB testing as a permit condition is  
3 intended to ensure that a receiving facility accepts legally authorized used oil. DTSC  
4 may impose any conditions on a hazardous waste facilities permit that are consistent  
5 with the intent of Chapter 6.5, Division 20, Health and Safety Code. (Health & Saf.  
6 Code § 25200(a).) Permits are required to contain conditions necessary to meet the  
7 operating requirements for permitted facilities. (Cal. Code Regs., tit. 22, § 66270.32  
8 (b)(1).) Permits shall also contain terms and conditions DTSC determines necessary to  
9 protect human health and the environment. (Cal. Code Regs., tit. 22, § 66270.32 (b)(2).)

10 Permitted facilities are required to have and follow a waste analysis plan. (Cal.  
11 Code Regs., tit. 22, §66264.13). This plan must be included in the permit application.  
12 (Cal. Code Regs., tit. 22, §66270.14 (b)(3).) In addition, PCB testing requirements in  
13 the waste analysis plan will not be of a uniform general application, but will depend on  
14 the operational specifics of the individual facility. For all of the above cited reasons, the  
15 Team recommends that the comment, and its proposed revisions to the condition be  
16 denied.

17 **Appeal Comment 17:**

18 **Part V., Condition O.2.b.(4)** states:

19 "Write the manifest number on the written test results for the used oil that was  
20 tested."

21 **Petitioner's Appeal Comment.** Petitioner claims it sends its used oil to the D/K  
22 facility and the requirements in Part V., Condition O.2.b.(4) are inconsistent with D/K's  
23 WAP. Petitioner's comments are similar to those in Comment 14 above. Petitioner  
24 requests that this condition be revised to apply only to receiving facilities that do not  
25 hold DTSC issued permits.

26 **Team's Response.** The Team recommends that this comment be denied for the  
27 reasons stated in arguments concerning Comments 14 and 16 above, incorporated  
28 herein by reference.

1 **Appeal Comment 18:**

2 **Part V., Condition O.2.(b)5** states:

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

6 **Petitioner's Appeal Comment.** Petitioner requests that this condition be  
7 removed from the Permit because Petitioner asserts a) it is unnecessary; b) there is no  
8 regulatory requirement to support it; and c) there is no need for the used oil receiving  
9 (recycling) facility to provide written test results within 24 hours.

10 **Team's Response.** The Team recommends that this comment be denied. First,  
11 the Team believes the requirement to provide test results quickly *is* necessary because  
12 if test results indicate that the receiving facility must reject the waste, the Permittee  
13 needs this information quickly so that it can implement alternative plans for the waste.  
14 Findings of this nature would trigger further testing of waste at the Facility because  
15 these test results would indicate that the Permittee has received used oil that may  
16 contain PCBs at concentrations above permissible limits. The 24 hour time limit is also  
17 practical. The condition is authorized by California Code of Regulations, title 22,  
18 section 66270.32(b)(2), which states that permits shall contain terms and conditions that  
19 DTSC determines are necessary to protect human health and the environment.

20 **Appeal Comment 19:**

21 **Part V., Condition O.2.b.(6)** states:

22 "Reject the load if the test results show that the used oil contains PCBs at a  
23 concentration of 2 ppm or greater."

24 **Petitioner's Appeal Comment.** Petitioner claims this condition adopts a  
25 standard of general application that is unnecessary and there is no regulatory  
26 requirement to support it. Petitioner states the standard for used oil is 5ppm and that  
27 the standard in this condition is inconsistent with both California and federal regulatory  
28

1 schemes for used oil. Therefore, Petitioner argues this condition must be removed  
2 entirely from the permit.

3       **Team's Response.** The Team recommends that this comment be denied. First,  
4 the 2 ppm or greater requirement is not a rule or standard of general application. It is a  
5 requirement to be considered in a specific case in a specific permit. The 2 ppm or  
6 greater requirement is a screening procedure that enables the Permittee to avoid testing  
7 each individual load for concentrations at or above 5ppm. The Permittee has requested  
8 authorization from DTSC to operate a hazardous waste facility to accept and store used  
9 oil as defined in Health and Safety Code, Section 25250.1. One of the standards for  
10 used oil is that it cannot contain PCBs at 5 ppm or greater. As the operator of an offsite  
11 hazardous waste facility, the Permittee is required to perform waste analysis in  
12 accordance with California Code of Regulations, title 22, section 66264.13 to ensure  
13 that the waste accepted meets the definition of used oil. This is usually accomplished  
14 by testing. Rather than requiring the Permittee to test each incoming load of used oil  
15 for PCBs to ensure it meets used oil standards, DTSC developed the practical  
16 procedure provided in this Permit that allows the Facility to accept incoming loads of  
17 used oil and consolidate the used oil into larger storage tanks. Once an adequate  
18 quantity of used oil has been accumulated and is ready to be shipped offsite, the  
19 Permittee is required to sample the storage tank and test for PCBs. A screening level of  
20 2 ppm was chosen to account for the dilution of consolidating many loads of used oil  
21 into larger storage tanks. To increase flexibility for this Facility, DTSC has allowed for  
22 testing of the storage tank onsite or testing of the outgoing loads at the receiving facility.  
23 Thus, DTSC has provided an approach that is practical and avoids a greater burden  
24 being placed on the Permittee, provided certain conditions are met. See, Response to  
25 Comment 4-3.

26       The condition is consistent with State and federal regulatory approaches. DTSC  
27 has statutory and regulatory authority to impose this condition as discussed in the  
28 arguments concerning Conditions 14 and 16 above, incorporated herein by reference.

1 The 2 ppm threshold is also consistent with the federal regulatory scheme. According  
2 to the American Oil Final Decision, "Used oil containing detectable levels (2ppm) of  
3 PCBs is subject to regulation pursuant to 40 Code of Federal Regulations section  
4 761.20(e). Used oil containing 2ppm, but less than 50 ppm of PCBs must be managed  
5 in accordance with 40 Code of Federal Regulations part 270 and can only be burned in  
6 a qualified incinerator as defined in 40 Code of Federal Regulations section 761.3.  
7 Used oil burners containing 2-49 ppm PCBs are subject to tracking and notice  
8 requirements in 40 Code of Federal Regulations 279, Subparts G&H and section  
9 279.66 and 40 Code of Federal Regulations section 279.72(b). Used oil containing  
10 PCBs at 50 or above must be managed in accordance with 40 Code of Federal  
11 Regulations part 761." (American Oil Final Decision pp 5-6, incorporated herein by  
12 reference). Therefore, the condition's use of the 2 ppm screening level is consistent  
13 with the federal regulatory scheme. For all of the reasons discussed above, the Team  
14 recommended that Appeal Comment 19 be denied.

15 **Appeal Comment 20.**

16 **Part V., Condition O.2.b.(7)** states:

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

21 **Petitioner's Appeal Comment.** Petitioner claims this standard adopts a  
22 standard of general application that is unnecessary, there is no regulatory requirement  
23 to support it and that it is inconsistent with both California and federal regulatory  
24 schemes for used oil. Therefore, Petitioner requests that this condition be removed  
25 entirely from the Permit.

26 **Team's Response.** The Team recommends that this comment be denied.  
27 California Code of Regulations, title 22, section 66264.13 requires facilities to conduct  
28 waste analysis to ensure the identity of the waste. In this case, the Permittee must



1 Appeal Comment 4: Deny the comment.

2 Appeal Comment 5: (a) Deny the first component of the comment regarding adding  
3 the option to obtain documentation from the generator, (b) grant the second and third  
4 components regarding analyticals and attachments to the manifest, (c) reject the  
5 Petitioner's proposed revisions to the condition, and (d) adopt the Team's suggested  
6 revisions to the condition.

7 Appeal Comment 6: (a) Deny the comment and the Petitioner's suggested revisions  
8 to the condition; and (b) for clarity, adopt the Team's suggested revisions to the  
9 condition.

10 Appeal Comment 7: (a) Deny the comment and the Petitioner's proposed revisions  
11 to the condition, and (b) for clarity, adopt the Team's suggested revisions to the  
12 condition.

13 Appeal Comment 8: Deny the comment.

14 Appeal Comment 9: Grant the comment.

15 Appeal Comment 10: Deny the comment.

16 Appeal Comment 11: Grant the comment.

17 Appeal Comment 12: Deny the comment.

18 Appeal Comment 13: (a) Grant the substance of the comment, (b) reject Petitioner's  
19 suggested revisions to the condition, and (c) adopt the Team's suggested revisions.

20 Appeal Comment 14: Deny the comment.

21 Appeal Comment 15: (a) Grant the substance of the comment, (b) reject the  
22 Petitioner's suggested revisions to the condition, and (c) adopt the Team's suggested  
23 revisions to the condition.

24 Appeal Comment 16: Deny the comment.

25 Appeal Comment 17: Deny the comment.

26 Appeal Comment 18: Deny the comment.

27 Appeal Comment 19: Deny the comment.

28 Appeal Comment 20: Deny the comment.

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DATED: June 23, 2008

// original signed by //

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Department of Toxic Substances Control