

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

4 In the Matter of: ) Docket Number: PAT-FY 09/10-01  
5 DUCOMMUN AEROSTRUCTURES, INC. ) ORDER PARTIALLY GRANTING  
6 4001 El Mirage Road ) PETITION FOR REVIEW AND DENIAL  
7 El Mirage, California 92301 ) OF REVIEW  
8 EPA ID. NO. CAD093245645 ) California Code of Regulations,  
9 ) Title 22, Section 66271.18  
10 )  
11 )

12 **I. INTRODUCTION**

13 On March 9, 2010, the Department of Toxic Substances Control's Treatment and  
14 Storage Team (DTSC) issued a Hazardous Waste Post-Closure Facility Permit (Permit)  
15 to the Ducommun AeroStructures, Inc., located at 4001 El Mirage Road, El Mirage,  
16 California 92301 (Facility). On April 8, 2010, Charles H. Pomeroy of McKenna Long &  
17 Aldridge representing Ducommun AeroStructures, Inc. (Petitioner or DAS) filed a  
18 Petition for Review (Appeal) of the Ducommun AeroStructures, Inc. permit decision.  
19

20 **II. JURISDICTION**

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

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

3 The location and description of the Facility is presented in the Permit as  
4 follows:

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6 **FACILITY LOCATION:**

7 The Ducommun AeroStructures, Inc. El Mirage Facility (Facility) is located  
8 at 4001 El Mirage Road, El Mirage, California 92301. It is situated on a  
9 120-acre site southwest of the intersection of El Mirage Road and Sheep  
10 Creek Road. It is bounded by El Mirage Road on the north and by Sheep  
11 Creek Road on the east. Its County Assessor Parcel Number is  
12 045711202-0000 AER. (See Figure 1)<sup>1</sup>

13 The Facility is located within the community of El Mirage, an  
14 unincorporated area of San Bernardino County. It is located nine miles  
15 west of U.S. Highway 395 and the City of Adelanto; and 13 miles north of  
16 Highway 138 and the community of Phelan.

17 The Facility is located in the southwest section of San Bernardino County,  
18 just north of the San Bernardino Mountains, northwest of the Cajon Pass  
19 (Interstate Highway 15). It lies within the El Mirage Valley and  
20 approximately two miles south of the El Mirage Dry Lake.

21 **DESCRIPTION of FACILITY OPERATIONS:**

22 The Permittee performs chemical milling of aerospace components. The  
23 Permittee currently does not operate any active permitted hazardous  
24 waste management unit. This Permit only authorizes the Permittee to  
25 conduct post closure care activities at the Closed Surface Impoundment.

26 **FACILITY HISTORY:**

27 From 1967 to 1978, the Facility was owned and operated by Anadite, Inc.  
28 primarily as a chemical milling plant for processing aircraft and spacecraft  
parts. Anadite, Inc. discharged its wastewaters to a 2.25-acre, unlined  
percolation pond. Use of the pond was discontinued when the Facility was  
purchased by Aerochem, Inc. in 1978. This pond became part of the  
closed Unit.

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<sup>1</sup> Figure 1 is located in the Permit and has not been reproduced in this Order.

1 In 1980, Aerochem, Inc. constructed a 0.75-acre lined surface  
2 impoundment within the percolation pond and discharged wastewaters to  
3 the lined surface impoundment, primarily caustic wastewater from the  
4 aluminum etching. The California Department of Health Services, DTSC's  
5 predecessor agency, issued an Interim Status Document to Aerochem,  
6 Inc. effective March 6, 1981. Aerochem, Inc. stored acidic wastewaters in  
7 above-ground tanks before sending them off-site. Aerochem, Inc. ceased  
8 discharging wastewaters to the surface impoundment in October 1987.

9 Aerochem, Inc. closed the percolation pond and surface impoundment as  
10 a combined regulated unit. At the start of closure, the surface  
11 impoundment contained an estimated 1,500 cubic yards (approx 2,000  
12 tons) of waste sediment and sludge. The waste was treated in-situ (pH  
13 adjustment), then ex-situ (stabilization and solidification), and then the  
14 treated waste was placed back into the surface impoundment. A protective  
15 cap was constructed over the percolation pond and the surface  
16 impoundment. DTSC acknowledged the closure certification in June 1992.  
17 DTSC issued a Post-Closure Permit to Aerochem, Inc. in November 1995,  
18 with an effective date of January 9, 1996, and an expiration date of  
19 January 9, 2006.

20 In January 2001, Ducommun AeroStructures, Inc. became the owner and  
21 operator of the Facility.

22 **B. PERMIT DECISION**

23 The Facility submitted a Post-Closure Permit Application dated  
24 February 9, 2009. DTSC deemed the application technically complete on  
25 August 26, 2009. DTSC prepared a Draft Hazardous Waste Post-Closure Facility  
26 Permit (draft Permit) and on or about September 8, 2009, DTSC issued a public notice  
27 for the draft Permit and established a public comment period from September 9, 2009,  
28 through October 26, 2009. The public notice also announced that a public meeting  
would be held at the El Mirage Community Center, 148 Community Lane, El Mirage,  
California 92301 on October 15, 2009. During the public comment period, including the  
public meeting, DTSC received twenty-six (26) comments on the draft Permit.

On March 9, 2010, DTSC issued a Notice of Final Hazardous Waste Post-  
Closure Facility Permit Decision for the Ducommun AeroStructures, Inc. facility.

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1 **C. PERMIT APPEAL PROCESS**

2 Pursuant to California Code of Regulations, title 22, section 66271.18,  
3 subdivision (a), the period for filing a petition for review (appeal) of this final Permit  
4 decision ended on April 12, 2010. One petition for review dated April 8, 2010, (Appeal)  
5 was received from Charles H. Pomeroy of McKenna Long & Aldridge representing  
6 Ducommun AeroStructures, Inc. (Petitioner). On April 15, 2010, the Permit Appeals  
7 Officer of the Department of Toxic Substances Control (hereinafter referred to as  
8 "Appeals Officer") issued a letter to Mr. Kent Christensen of Ducommun AeroStructures,  
9 Inc., stating that pursuant to California Code of Regulations, title 22, section 66271.14,  
10 subsection (b)(2), the entire Permit was stayed until the Appeals Officer has completed  
11 review of the appeal. The review is to determine which, if any, of the issues raised in  
12 the appeal meet the criteria for granting a review pursuant to California Code of  
13 Regulations, title 22, section 66271.18.

14  
15 **IV. STANDARD OF REVIEW**

16 California Code of Regulations, title 22, section 66271.18, subdivision (a),  
17 provides that any person who filed comments or participated in the public hearing on a  
18 draft permit may petition the Department to review any condition of the final permit  
19 decision to the extent that the issues raised in the petition for review were also raised  
20 during the public comment period for the draft permit, including the public hearing. In  
21 addition, any person who did not file comments or participate in the public hearing on  
22 the draft permit may petition the Department for review of the final permit decision, but  
23 only with respect to those changes from the draft to the final permit.

24 California Code of Regulations, title 22, section 66271.18, subdivision (a), also  
25 provides, in pertinent part, that:

26  
27 The petition shall include a statement of the reasons supporting that  
28 review, including a demonstration that any issues being raised were raised  
during the public comment period (including any public hearing) to the

1 extent required by these regulations and when appropriate, a showing that  
2 the condition in question is based on:

- 3 (1) a finding of fact or conclusion of law which is clearly erroneous, or  
4 (2) an exercise of discretion or an important policy consideration which  
5 the Department should, in its discretion, review.  
6

7 California Code of Regulations, title 22, section 66271.12, specifies the extent to  
8 which issues are required to be raised during the public comment period for a draft  
9 permit decision. Specifically, this section states that:  
10

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

16 Because Petitioner submitted comments on the draft permit during the public  
17 comment period, Petitioner has standing to petition for review of any issues raised  
18 during the public comment period for the draft permit, as well as any issues that pertain  
19 to changes from the draft to the final permit decision.  
20

## 21 **V. DISCUSSION AND FINDINGS**

22 The Appeals Officer has reviewed the Appeal and hereby responds to the  
23 arguments and comments presented. Petitioner's Appeal identified General Comments  
24 and Specific Comments concerning the Permit decision. The Specific Comments were  
25 identified by the corresponding number used by DTSC in its Response to Comments  
26 (RTC) document. DTSC in the RTC document divided certain comments into several  
27 sub-comments and responded to them as such. Petitioner's Specific Comments appear  
28 to follow the layout and structure of DTSC's RTC. For clarity and brevity of this Order,  
the Appeals Officer has recombined the Petitioner's sub-comments and has

1 summarized the core issues of the Appeal. For the full text of the Petitioner's  
2 comments, please see the Appeal.

### 3 **Appeal Comment 1**

4 Petitioner's General Comment 1a, asserts that DTSC's draft memorandum,  
5 dated May 12, 2009 ("draft Memo") fails to be a valid basis for DTSC's comments and  
6 actions on the permit for several reasons: (1) it is a draft document; (2) it was not  
7 addressed to DAS; (3) it was not received by DAS to review before the public comment  
8 period; and, (4) it was not provided to the public before or during the comment period.  
9 Petitioner further asserts that, "This lack of disclosure is contrary to the requirements set  
10 forth at §66271.8(b)(6), and since the material was in draft form, the draft Memo cannot  
11 be considered readily available to the public as set forth at §66271.8(c)." Petitioner  
12 alleges that because the draft memo was not a part of the record, DTSC's reliance on  
13 the draft memo results in the permit decision being arbitrary and capricious.

### 14 **Response to Appeal Comment 1**

15 The Petitioner has failed to meet the burden to establish that a review of this  
16 Appeal Comment should be granted pursuant to the criteria set forth in California Code  
17 of Regulations, title 22, section 66271.18, subdivision (a). The Appeals Officer finds  
18 that during the public comment period, Petitioner did not raise the issues concerning the  
19 status of the draft Memo or its availability for public review. In addition, the facts in the  
20 administrative record show that the Petitioner was provided a copy of the draft Memo  
21 prior to the public notice of the draft Permit and the Memo was available for public  
22 review. Therefore, the petition for review of this Appeal Comment is denied.

23 The Appeals Officer provides the following additional response to Petitioner's  
24 General Comment 1.a. Petitioner asserts that DAS received the draft Memo by email  
25 (to Mr. Christensen) on October 21, 2009, and that neither Mr. Christensen nor any  
26 other DAS personnel has a record of receipt of the draft Memo before that date. The  
27 administrative record for the Final Permit Decision, provided to the Appeals Officer by  
28 DTSC contains: DTSC's May 12, 2009 email transmitting the draft Memo to

1 Mr. Christensen; Mr. Christensen's October 19, 2009 email requesting DTSC to forward  
2 another copy of the cost estimate calculations to replace the previously received copy  
3 which was wiped out during computer maintenance; and, DTSC's October 21, 2009  
4 email forwarding to Mr. Christensen the May 12, 2009 email with its attachments  
5 including the draft Memo.

6 The administrative record also includes a copy of the final version of the draft  
7 Memo, dated June 12, 2009. Pursuant to California Code of Regulations, title 22,  
8 section 66271.9, subdivision (d)(1)(F), the public notice and fact sheet for the draft  
9 Permit provide the location and time that the administrative record is available at the  
10 DTSC Cypress Field Office. Therefore, it is clear from the administrative record that  
11 DTSC did share the draft Memo with DAS on May 12, 2009 and it finalized the draft  
12 Memo on June 12, 2009, which is before the start of public comment period  
13 (September 9, 2009) for the draft Permit.

14 The Appeals Officer also notes that subdivision (b)(6) of California Code of  
15 Regulations, title 22, section 66271.8, as cited by the Petitioner, does not exist. The  
16 Appeals Officer assumes Petitioner intended to cite subdivision (b)(5), "other documents  
17 contained in the supporting file for the draft permit." California Code of Regulations, title  
18 22, section 66271.8, subdivision (b) does not set any requirements concerning  
19 disclosure, it only lists the contents of the administrative record for the draft permit.

20 The Appeals Officer also finds that Petitioner misinterprets the application of  
21 California Code of Regulations, title 22, section 66271.8, subdivision (c) for material in  
22 the administrative record. The form of the Memo as "draft" is not relevant to its physical  
23 inclusion in the record. The final version of the Memo was included in the administrative  
24 record physically located at the DTSC Cypress Field Office.

## 25 **Appeal Comment 2**

26 This Appeal Comment concerns final Permit condition II.8. which extends the  
27 post-closure care period to 30 years beginning on the effective date of the Permit. This  
28 Appeal Comment encompasses Petitioner's General Comment 1b, Specific Comments

1 5a through 5k, and Specific Comment 6c as it relates to the 30-year post-closure period.  
2 Petitioner makes the following assertions and objections to the extension of the post-  
3 closure care period:

4 A. DTSC has failed to set forth facts justifying the protection of human health  
5 and environment conclusions that were the basis for extending the post-closure care  
6 period to 30 years beginning on the effective date of the Permit.

7 B. DTSC has failed to follow federal guidelines (OSWER Policy Directive  
8 #9476.00-5, January 1987) that are to be considered for extending the post-closure  
9 care period.

10 C. DTSC has failed to adequately respond to the Demonstration Report (April  
11 2004). The Demonstration Report provides the characterization of the nature and  
12 extent of the release from the unit. Therefore, the Demonstration Report refutes  
13 DTSC's conclusions that the extended post-closure period is necessary because the  
14 release has not been fully characterized, the release may be ongoing, and the unit is  
15 under evaluation monitoring program for groundwater.

16 D. Contrary to DTSC's observations and concerns about the sustainability of  
17 the vegetative cover based on the visible grass cover, the vegetative cover is  
18 performing as designed based on the coverage of the grass roots and the growth and  
19 reseeded characteristics of the "Panoche" red brome grass. Therefore, DTSC's  
20 assumption that the vegetative cover will fail to protect the closure cap without  
21 additional monitoring and maintenance past the previously required post-closure care  
22 period is incorrect.

23 E. The status of the corrective action program for releases not associated  
24 with the regulated unit provides no basis for extending the post-closure care period for  
25 the regulated unit. Although the corrective action program is currently implemented  
26 through the Permit, DTSC has other alternative mechanisms. The delays in corrective  
27 action are due to DTSC's lack of responsiveness to DAS's submittals and therefore  
28 should not be used as basis for extending the post-closure period.

1           Petitioner requests that the Permit provision related to the post-closure period be  
2 returned to the thirty year period that began on the effective date of the prior permit.

3 **Response to Appeal Comment 2**

4           The Appeals Officer grants review of Appeal Comment 2, issues A, C, D and E,  
5 the substance of which was raised during the public comment period, and denies review  
6 for Appeal Comment 2, issue B.

7           Appeal Comment 2, issue B, concerns following federal guidelines (OSWER  
8 Policy Directive #9476.00-5, January 1987) for determining the post-closure care  
9 period. During the public comment period, Petitioner did not raise the issue of following  
10 federal guidelines (OSWER Policy Directive #9476.00-5, January 1987). Appeal  
11 Comment 2, issue B, does not request review of a condition of the Permit, nor does it  
12 identify any change from the draft to the final Permit. Appeal Comment 2, issue B, fails  
13 to demonstrate a finding of fact or conclusion of law which is clearly erroneous, or an  
14 exercise of discretion or an important policy consideration which the Department should  
15 review. Thus, the Petitioner has failed to meet the burden to establish that pursuant to  
16 the criteria set forth in California Code of Regulations, title 22, section 66271.18,  
17 subdivision (a), a review of Appeal Comment 2, issue B should be granted.

18 **Appeal Comment 3**

19           This Appeal Comment concerns final Permit condition II.9. which establishes the  
20 post-closure cost estimate of \$1,618,856 for the 30 year post-closure care period. This  
21 Appeal Comment encompasses Petitioner's General Comment 2 and Specific  
22 Comments 6a, 6b, and 6d through 6h. Petitioner makes the following assertions and  
23 objections to the post-closure cost estimate:

24           A.     DTSC failed to comply with state administrative rulemaking statutes by  
25 adopting and imposing standards for cost estimates without meeting notice and  
26 comment obligations. See California Government Code, section 11340.5; and  
27 generally, California Government Code, sections 11340 et seq. DTSC's action to  
28 impose its own post-closure cost estimate fails to comply with rulemaking requirements.

1 Without adoption by rulemaking, the imposition of an alleged “industry-standard cost  
2 estimating software” on cost estimates by DTSC is improper and exceeds DTSC’s legal  
3 authority.

4 B. DTSC’s action to impose its own post-closure cost estimate exceeds its  
5 authority. The statutes and regulations do not allow DTSC to self-impose closure or  
6 post-closure cost estimates. Health and Safety Code section 25246(a) states that the  
7 submission of a post-closure plan by a hazardous waste facility “shall contain the  
8 *owner’s or operator’s* estimate of the cost of closure and subsequent maintenance...”  
9 (Emphasis added)<sup>2</sup>. Similarly, California Code of Regulations, title 22, section  
10 66264.144, subdivision (a) imposes an obligation upon the owner/operator to prepare  
11 the post-closure cost estimate. Only the owner/operator prepares the cost estimate and  
12 any alteration by DTSC is inconsistent with the regulatory framework. Even if DTSC’s  
13 alterations were solely based on the DAS information, DAS as the owner/operator under  
14 the Permit would be the only party allowed to prepare the estimate. Otherwise, DTSC  
15 could arbitrarily impose any cost, notwithstanding its claims of reasonableness.

16 C. DTSC used an alleged “industry-standard cost estimating software” that  
17 has not been subjected to any form of public comment on its veracity or accuracy as  
18 being “industry-standard.” The software appears to be used as some form of internal  
19 measure that provides DTSC guidance for itself on cost estimation. The imposition of  
20 internal guidance by DTSC on cost estimates is improper and exceeds its legal  
21 authority. DTSC used the software to recalculate the cost estimate and, in particular, to  
22 provide cost estimates for water sample collection and analysis, contingency costs,  
23 vegetative cover reseeding, and well abandonment. The DTSC software overestimated  
24 the costs compared to DAS’s experience and created new categories and data for the  
25 cost estimate that are inconsistent with the submission prepared by DAS. DTSC

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28 <sup>2</sup> Emphasis was added in Petitioner’s original comment.

1 improperly claims that the DAS cost estimate lacked sufficient details as they were  
2 applied to DTSC's cost estimating software.

3 D. DTSC approved the prior DAS permit for post-closure with the same  
4 fundamental details as set forth by DAS for the present Permit. The regulatory  
5 requirements for post-closure cost estimation have not changed since they were  
6 adopted in May 1991. The closed Unit has not fundamentally changed since the prior  
7 permit was issued. Therefore, the "adequacy" of the submission is entirely consistent  
8 with the prior submissions, the regulation and the Unit. It is not possible to determine  
9 how the adequacy of cost estimates has shifted between the regulations adopted in  
10 1991 and today.

11 E. DAS's lack of comment on DTSC's proposed cost estimate prior to the  
12 public comment period is not relevant to DTSC's justification in the RTC for imposing its  
13 cost estimate. DAS provided its comment on the cost estimate in a manner consistent  
14 with the regulations.

### 15 **Response to Appeal Comment 3**

16 The Appeals Officer grants review of Appeal Comment 3, issues B, C and D, the  
17 substance of which was raised during the public comment period, and denies review for  
18 Appeal Comment 3, issues A and E.

19 Appeal Comment 3, issue A, concerns complying with state administrative  
20 rulemaking statutes. During the public comment period, Petitioner did not raise the  
21 issue of complying with state administrative rulemaking statutes. Appeal Comment 3,  
22 issue E, is simply a response to statements in DTSC's RTC. Appeal Comment 3,  
23 issues A and E, do not request review of a condition of the Permit, nor do they identify  
24 any change from the draft to the final Permit. Appeal Comment 3, issues A and E, fail  
25 to demonstrate that inclusion of a permit condition represents a finding of fact or  
26 conclusion of law which is clearly erroneous, or an exercise of discretion or an important  
27 policy consideration which the Department should review. Thus, the Petitioner has  
28 failed to meet the burden to establish that pursuant to the criteria set forth in California

1 Code of Regulations, title 22, section 66271.18, subdivision (a), a review of Appeal  
2 Comment 3, issues A and E should be granted.

3 **Appeal Comment 4**

4 This Appeal Comment concerns final Permit condition IV.1, UNIT WASTE  
5 SOURCES AND TYPES, which includes a description of chemicals found during Facility  
6 investigations. This Appeal Comment is Petitioner's Specific Comment 8c. The full text  
7 of Specific Comment 8c is:

8  
9 DTSC's reference to the 1986 RCRA Facility Assessment and the 1987  
10 Cleanup and Abatement Order ("CAO") from the RWQCB as support for  
11 information that lead and cadmium exceeded maximum contamination  
12 limits (MCLs) in groundwater is inappropriate. An actual review of data is  
13 necessary to isolate how these apparent statements may have been  
14 made. As has been the case at sites with long regulatory histories,  
15 misstated and inaccurate facts are sometime inserted in documents and  
16 thereafter become the basis for otherwise unfounded support. To date,  
17 there are no actual samples taken at any time at the Facility that show  
18 levels of lead or cadmium exceeding MCLs in groundwater. Data  
19 developed before 1987 was reviewed and does not indicate the presence  
20 of lead of cadmium in groundwater in excess of MCLs. In fact, no data  
21 was found identifying the presence of lead or cadmium above detection  
22 limits in soil beneath the Unit.

23 Notably, DTSC fails to identify the current CAO issued by the RWQCB in  
24 1996, nor the 1989 CAO. In the 1996 document, which was fully reviewed  
25 and made a part of the prior post-closure permit for the Facility, no  
26 reference to lead or cadmium is made either in the wastes discharged to  
27 the Unit or in the groundwater underlying the Unit. No mention of  
28 cadmium or lead exceeding MCLs is made.

EPA prepared a RCRA Facility Assessment dated September 1986  
("RFA"). In that document, cadmium and lead are not mentioned as  
detected in groundwater. See RFA, page 9. Section 4.2 of the RFA cites  
"excess concentrations of ... cadmium" that entered the percolation pond  
and soil samples showing "slightly elevated levels of lead, cadmium and  
barium." Contrary to DTSC's claim, there is no information stating that  
cadmium or lead was ever detected in excess of MCLs.

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1 **Response to Appeal Comment 4**

2 The Appeals Officer grants review of this Appeal Comment, the substance of  
3 which was raised during the public comment period, and because it involves changes  
4 from the draft to final Permit.

5 **Appeal Comment 5**

6 This Appeal Comment concerns Petitioner’s request to add reference to the  
7 Lahontan RWQCB Cleanup and Abatement Order #6-94-70 in the final Permit. This  
8 Appeal Comment is Petitioner’s Specific Comment 9. The full text of Specific Comment  
9 9 is:

10  
11 DAS still believes the pre-existing and still active CAO from Lahontan  
12 RWQCB should be made a continuing reference within the Permit,  
13 notwithstanding DTSC’s objection over the area in which it is placed in the  
14 Permit. De-linking of the two documents creates a situation where  
15 duplicative and overlapping obligations between the two documents will  
16 occur.

16 **Response to Appeal Comment 5**

17 The Appeals Officer grants review of this Appeal Comment, the substance of  
18 which was raised during the public comment period.

19 **Appeal Comment 6**

20 This Appeal Comment concerns final Permit condition IV.1., UNIT-SPECIFIC  
21 SPECIAL CONDITIONS, (a) which provides specifications for the vegetative layer. This  
22 Appeal Comment is Petitioner’s Specific Comment 10. The full text of Specific  
23 Comment 10 is:

24  
25 *Please see Comment 5e. Since DTSC states that it is uncertain as to the*  
26 *meaning of the recommended change, it is meant to clarify that the*  
27 *vegetative cover includes the root systems of the vegetation. DAS sought*  
28 *the language change to make sure that the meaning of vegetative cover*  
*incorporated the entire vegetative mass including its roots.*

1 **Response to Appeal Comment 6**

2 The Appeals Officer grants review of this Appeal Comment, the substance of  
3 which was raised during the public comment period.

4 **Appeal Comment 7**

5 This Appeal Comment concerns final Permit condition IV.1., UNIT-SPECIFIC  
6 SPECIAL CONDITIONS, (b) which requires compliance with the evaluation monitoring  
7 program requirements. This Appeal Comment is Petitioner’s Specific Comment 11.

8 The full text of Specific Comment 11 is:

9  
10 DTSC’s RTC appears to be non-responsive to DAS’s original comment.  
11 The Demonstration Report from April 2004 remains without review, or an  
12 approval or denial of any kind, let alone one with substantiated reasoning.  
13 See Comment 5b. DTSC’s reply concerning the March 2009 WQSAP  
14 does not address the comment, nor does its statement that it “further  
15 reviewed the records and did not find any reason or determination to  
16 change the monitoring program from evaluation monitoring to detection  
17 monitoring.” There has been no determination made on the  
18 Demonstration Report despite its submission six years ago. If this RTC is  
19 meant to deny it, it is inappropriate and without basis.

17 **Response to Appeal Comment 7**

18 The Appeals Officer grants review of this Appeal Comment, the substance of  
19 which was raised during the public comment period.

20 **Appeal Comment 8**

21 This Appeal Comment concerns final Permit condition VI.4. which lists twelve  
22 (12) Solid Waste Management Units (SWMUs) for corrective action. This Appeal  
23 Comment is Petitioner’s Specific Comment 17. The full text of Specific Comment 17,  
24 including its footnote, is:

25  
26 DTSC altered the list of SWMUs and AOCs without any basis or findings.  
27 Instead, it arbitrarily concluded that certain AOCs were now SWMUs  
28 without any finding or input from DAS. There are now 12 SWMUs  
identified. DTSC states that it looked at the list of SWMUs and AOCs and

1 combined them into one SWMU list. There is no detail in the record  
2 concerning DTSC's basis or its decision making process for converting an  
AOC to a SWMU. The action is arbitrary and without foundation.

3 SWMUs 1, 2, 3, 4, 5, 7, 8, 9, 10 and 11 were all previously identified as  
4 AOCs, a term defined in the prior permit consistent with federal guidance  
5 to mean "an area which is not at this time known to be a solid waste  
6 management unit (SWMU), where hazardous waste and/or hazardous  
7 constituents are present or suspected to be present as a result of a  
8 release from the facility."<sup>3</sup> See prior permit, Definitions, page VIII-2.  
There are no facts presented to suggest a release of hazardous  
constituents has occurred at any of the 12 newly named SWMUs.

9  
10 **Response to Appeal Comment 8**

11 The Appeals Officer grants review of this Appeal Comment, the substance of  
12 which was raised during the public comment period.

13  
14 **VI. ORDER**

15 For the reasons set forth in this Order, the Appeals Officer grants review of  
16 Appeal Comments: 2 (for issues A, C, D and E), 3 (for issues B, C and D), 4, 5, 6, 7,  
17 and 8. Review of Appeal Comments 1, 2 (for issue B), and 3 (for issues A and E) is  
18 denied.

19 Pursuant to California Code of Regulations, title 22, section 66271.18,  
20 subdivision (c), the Appeals Officer will issue a public notice to set a briefing schedule  
21 for Appeal Comments 2, 3, 4, 5, 6, 7, and 8, for which review has been granted.  
22 Interested parties will be given an opportunity to file written arguments pertaining to  
23 these seven (7) Appeal Comments in accordance with the briefing schedule.

24 The briefs should include all reasonably available arguments and factual grounds  
25 supporting their position, including all supporting material. To assure complete

26  
27 <sup>3</sup> The two remaining SWMUs identified in the Permit., SWMU 6, Waste solvent Storage Area next to the  
28 Maskant Spray Booth and SWMU 12, Hazardous Waste Roll-off Bin Storage Area, were not identified as  
AOCs in the prior permit as described. Since no findings have been presented or are within the record,  
the basis for identifying these units as a SWMU is also unclear.

1 consideration, all supporting materials should be included in full and may not be  
2 incorporated by reference, unless they are already a part of the administrative record, or  
3 consist of State or Federal statutes and regulations, Department of Toxic Substances  
4 Control or USEPA documents of general availability, or other generally available  
5 reference materials. Additionally, the briefing documents must provide facts showing  
6 the technical, regulatory or statutory basis for the requested outcome, and must be  
7 accompanied by the data and other reference material that is used to support the  
8 argument, including citations to the administrative record.

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

12 Mr. Mohinder S. Sandhu, P.E.  
13 Permit Appeals Officer  
14 Department of Toxic Substances Control  
15 8800 Cal Center Drive  
16 Sacramento, California 95826

17 An additional electronic copy of the briefing arguments may be e-mailed to  
18 [appeals@dtsc.ca.gov](mailto:appeals@dtsc.ca.gov).

19 Persons who submit written arguments may also request that the Appeals Officer  
20 hold an Informal Appeals Conference, so they may also present their arguments orally.  
21 If requested, the Appeals Officer has the discretion to schedule the Informal Appeals  
22 Conference after the close of the briefing period.

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