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May 22, 2006

26635.80319

VIA E-MAIL TO AWONG@DTSC.CA.GOV

Alfred Wong
Project Manager
Department of Toxic Substances Control
700 Heinz Avenue, Suite 300
Berkeley, CA 94710

Re: DeMenno/Kerdoon Comments on American Oil Company Draft Standardized
Hazardous Waste Facility Permit

Dear Mr. Wong:

The following comments on the Draft Standardized Hazardous Waste Facility Permit ("Permit") for the American Oil Company ("American Oil") are being submitted on behalf of DeMenno/Kerdoon ("D/K"). D/K wishes to provide the following comments on this Permit in the context of DTSC's recent aborted effort to call in permit modifications for PCB testing at all in-state used oil transfer facilities. D/K believes that the requirement for PCB testing on each truck-to-truck transfer, without regard for the destination of the waste, would set a precedent for other transfer facilities. Implementation of this proposal at all in-state transfer facilities would adversely affect the California used oil industry and California consumers. D/K proposes that DTSC instead limit the mandatory PCB testing to all tankers of used oil that will be sent out of state. If the oil will be processed in-state at a permitted treatment and recycling facility, the oil should be tested at the in-state facility consistent with that facility's WAP. D/K also proposes that DTSC enhance compliance with Health and Safety Code Section 25250.09.

At D/K's Compton facility, each tank receiving used oil must be tested to determine whether the used oil contains less than 2 ppm PCBs. If a tank contains PCBs at a concentration of 2 ppm or greater, D/K must trace the source of the PCBs back to the individual shipment by testing samples that are collected from each of the incoming trucks prior to transferring their loads into a tank. If any of the individual loads contains PCBs at a concentration of 5 ppm or greater, D/K must dispose of the entire tank as PCB-containing hazardous waste.

In its recent call-in letters to used oil transfer facilities, DTSC sought to impose PCB testing requirements on storage tanks prior to shipment to recycling facilities that are

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similar to the PCB testing on truck-to-truck transfers that it now proposes at American Oil. The conditions requiring PCB testing for each truck-to-truck transfer in this Permit are of grave concern to D/K because requiring such testing for used oil that is destined for in-state recycling is unnecessary, highly impractical and would pose tremendous delays in routine used oil transportation.

D/K understands that the proposed testing requirement is appropriate for oil that is being transported out-of-state because the standards for used oil are so much less stringent outside of California. However, imposing blanket PCB testing requirements on each transfer facility will discourage rather than encourage compliance with PCB testing requirements. Once a transporter drives to another state, the transporter is only required to meet the federal 50 ppm standard under TSCA. Deleting the option of sending the used oil to an in-state facility without testing will encourage transporters to flaunt the California regulations and ship waste out of state. As oil prices continue to increase with no end in sight, there is even more incentive for transporters to take oil out of state. Used oil can be used in a variety of ways under the federal regulations. Used oil can be reconditioned by removing impurities, introduced into a refining process as a feedstock to produce gasoline and coke, or processed and burned for energy recovery. Thus, oil that does not meet California standards for used oil and must be managed as a hazardous waste in California may be a valuable commodity in states with less stringent environmental regulations. If DTSC requires testing on each tank or truck load that is transferred to another truck, transporters will be more likely to simply make the Section 25250.9 certifications and then haul the used oil to another state for recycling.

Under the proposed requirements included in American Oil's draft permit, if a truck is destined for in-state recycling, that truck would be required to sit idle at the transfer station until a sample of the used oil can be collected and tested. The practical reality is that in many cases, there will be a lapse of two to three days between the time a truck reaches a transfer station and the time the test results of the truck's contents are received. Any number of scheduling issues play into this, including the timing of a truck's arrival and the analytical schedule and capacity of the contracted laboratory. In the meanwhile, the truck must remain idle and still loaded at the transfer facility until the testing is completed. Rather than wait up to several days for a load to be tested, the temptation will be to drive smaller trucks directly to a neighboring state to unload the oil. If this precedent is applied to tanks at transfer facilities, then bulking will not occur and individual trucks will be similarly incentivized to drive directly out-of-state. The end result of sending used oil with a high PCB content to other states is that an increasing proportion of used oil generated in California will be managed at out-of-state facilities with reduced environmental protections.

In addition, as more transporters take used oil out of the state without testing it for PCBs, there will be a huge negative economic impact on the transporters and recyclers who

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manage used oil in California. Inevitably, used oil meeting the recycled oil criteria will be trucked out of state by transporters unwilling to keep their trucks idle for several days while they wait for test results. As a result, California consumers will be impacted by higher costs for and reduced availability of recycled oil.

Health and Safety Code Section 25250.9 was adopted to ensure used oil generators are informed that their used oil may be sent to an out-of-state facility that does not meet stringent hazardous waste management standards when choosing whether to process used oil at a California facility or to send the used oil to another state. This statute evinces the Legislature's desire to keep used oil in-state and managed as hazardous waste. California standards include secondary containment, waste composition analysis and financial assurances. This legislative policy has helped prevent used oil from being dumped and it has successfully promoted used oil recycling. Enhanced enforcement of Section 25250.9 would ensure that all used oil is properly tested at California treatment and recycling facilities, making it unnecessary to test used oil at transfer facilities unless that oil will be transported to another state.

Additionally, D/K takes issue with the alternative testing condition set out in the permit. Specifically, it is impractical and unnecessary to require receiving facilities to test American Oil's used oil for PCBs as stated in Section V.I.2.b. Permitted California treatment and recycling facilities are required to test the used oil in accordance with their WAPs. D/K is opposed to the imposition of different testing requirements on California treatment and recycling facilities as proposed in American Oil's Permit. This is inconsistent with the facilities existing permits and will result in the receiving facility being required to comply with two overlapping sets of PCB testing requirements. As noted above, the draft permit should acknowledge the existing in-state management scheme and allow waste to be tested at permitted in-state facilities pursuant to the facility WAP. It may make sense to require out-of-state facilities to test individual trucks because the oil could legally be commingled with high PCB oil. However, it may make more sense to simply require trucks bound for out-of-state facilities to be tested on a truck by truck basis. This is especially true given California's lack of jurisdiction over out-of-state facilities.

As a practical matter, truck-to-truck transfers only occur when a transporter is taking used oil out of state. Consequently, requiring PCB testing on truck-to-truck transfers, such as DTSC proposed to require at the American Oil transfer facility, may not affect the in-state management of used oil. However, D/K is concerned that if DTSC does not acknowledge the in-state option of having used oil tested at the treatment and/or recycling facility, then it will set the precedent for applying these standards to transfer facilities. D/K is also very troubled by the proposal to change practices at existing in-state facilities. This is either ill-conceived or a back door attempt to change existing facility WAPs without associated permit modifications. In either event, it is bad policy. A better model for enforcement would be to expressly require PCB testing requirements only on used oil that is destined for transport to an out-of-state facility.

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D/K greatly appreciates your consideration of these comments.

Sincerely,

Original signed by Jodi Smith

Jodi Smith
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

Enclosure

cc: Bruce DeMenno, DeMenno/Kerdoon
Rosemary Domino, D/K Environmental
Mohinder Sandhu, Department of Toxic Substances Control

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