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January 12, 2007

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VIA E-MAIL WGIN@DTSC.CA.GOV AND U.S. MAIL

Watson Gin, Deputy Director  
Hazardous Waste Management Program  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, California 95812-0806

Re: **Petition for Review of Final Standardized Hazardous Waste Facility  
Permit for American Oil Company: 13736-13740 Saticoy Street, Van Nuys,  
CA 91402 (EPA ID No. CAD981427669)**

Dear Mr. Gin

The following petition for review of the Draft Standardized Hazardous Waste Facility Permit ("Permit") for the American Oil Company ("American Oil") is being submitted on behalf of Demenno/Kerdoon ("D/K"). D/K submitted comments on American Oil's draft permit on May 22, 2006 specifically concerning the requirement in the draft permit for PCB testing on each truck-to-truck transfer of used oil, without regard for the destination of the waste. The conditions requiring PCB testing for each truck-to-truck transfer in this Permit remain a serious concern to D/K. The requirement for such testing for used oil that is destined for in-state recycling is unnecessary. Moreover, it establishes a precedent, which if applied generally, would pose an obstacle to the routine collection and transportation of used oil in California. If this requirement were to be applied at all transfer operations, the end result would be to substantially increase truck traffic and miles driven in rural areas and increase truck waiting time and idling emissions in urban areas. This huge environmental impact would vastly increase the environmental footprint of DTSC's regulatory program. This change in testing protocol, and associated impacts, simply is not justified given that the current in-state testing requirements are sufficient to catch the minutely low incidence rate of PCBs in used oil.

D/K proposed in their comments that DTSC instead limit the PCB testing requirement to American Oil's tankers of used oil that will be sent out-of-state for recycling. D/K continues to believe that this would most appropriately balance DTSC's desire to reduce the potential for PCB contamination in used oil without causing a detrimental impact on the used oil hauling industry and the environment. In its Response to Comments document for American Oil's Permit, DTSC stated that the "permit conditions also provide flexibility in that it allows AOC either to test the outgoing oil for PCBs or to

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instruct the receiving facility to test the tanker truck containing the used oil load from AOC for PCBs." While D/K applauds DTSC's effort to provide permittees with the flexibility to most efficiently address site-specific and situation-specific conditions, D/K believes that the requirement for testing of truck-to-truck transfers of used oil for PCBs, when the used oil will be recycled in California, is truly unnecessary and is an issue that DTSC should, in its discretion, review. 22 Cal. Code Regs. §66271.18. The need for this requirement is not supported by substantial evidence and the consequences both for the in-state used oil industry and on the environment make this testing requirement a poor policy decision and an abuse of discretion.

As D/K pointed out in its comments, the current requirements at in-state recycling facilities for testing each tank receiving used oil for PCBs are effective and sufficient to identify PCB-containing oil and to ensure that PCB-contaminated oil is properly disposed of as hazardous waste. The PCB testing requirements that DTSC wishes to impose on American Oil would not significantly increase the efficacy of existing testing protocols – but would have significant unintended consequences in several ways.

DTSC underestimates the impact that requiring testing at transfer facilities will have on the used oil industry in rural areas. Used oil in rural areas is transported predominately in smaller bobtail trucks that must be filled and emptied on a daily basis in order for the transporters to remain economically viable. At the same time, most rural transfer facilities have only one receiving tank and are simply too small to have, as DTSC suggests, onsite laboratory testing facilities. Therefore, if DTSC applies the American Oil precedent at all transfer operations, each of these smaller transfer facilities will be required to lock down their tanks during the time it takes to drive a sample to the nearest regional laboratory and obtain analytical test results. As a practical matter, a transfer facility located in a rural area would be required to lock down its receiving tank for several days at a time. This will have a devastating effect on the viability of rural transfer facilities and the transporters that utilize them.

Rural transporters cannot remain in business unless they can unload oil on a daily basis. Rather than waiting idle for the local transfer facility to unlock its tank, transporters will be forced to drive to larger receiving facilities, most of which are located in urban areas. As a result, rural bobtail transporters will substantially increase the miles they must drive on a daily basis to pick up and deliver used oil. Both the number of trucks on the roads and the number of miles driven will increase significantly.

Moreover, the influx of rural transporters required to travel to larger facilities to deliver oil will decrease the unloading efficiency of larger facilities. D/K already has a large number of trucks on average queued up to unload every day. The addition of multiple bobtail loads per day from rural areas would increase the wait time for deliveries at D/K, and the corresponding decrease in efficiency for drivers would be significant.

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More importantly, in addition to decreasing the efficiency of the unloading operations, the increase in truck traffic would have a significant effect both on the local traffic on the roads and on truck emissions in the vicinity of receiving facilities. The long-term projected impact of the proposed PCB testing requirements would be to increase the impact that recycling facilities have on neighboring communities. D/K is committed to reducing the impact that its facilities have on the surrounding communities. Impacts due to increased traffic and longer wait times would be counterproductive to efforts to minimize the environmental impact of recycling operations. These impacts will be even more strongly felt at those facilities that are voluntarily testing incoming trucks for PCBs. These are real environmental and safety issues as opposed to the hypothetical threat underlying the proposed testing requirement.

D/K believes that DTSC has not considered the bigger picture in analyzing the ramifications that the PCB testing requirements contained in American Oil's Permit would have if applied at on small rural and large urban operations in the used oil industry. The current protocols used to test for PCBs in oil are already effective to eliminate PCBs in used oil destined for the California used oil market. Rather than significantly reducing PCB contamination in used oil, DTSC's testing protocol merely serves to impact DTSC's environmental footprint.

The application of the proposed testing requirement to oil bound for in-state recycling represents a fundamental change in DTSC regulatory policy. If intended to be applied statewide, it is a standard of general application that is subject to the rulemaking requirements of the APA. The rulemaking process is the appropriate mechanism for making such significant policy decisions. That process would allow for the unforeseen consequences of a such a significant change in DTSC policy to be fully vetted and reviewed under CEQA.

Therefore, we are appealing to DTSC to review the requirement in the American Oil permit for PCB testing of truck-to-truck transfers of used oil that will be recycled in California. D/K believes that the testing requirement is appropriate for used oil that is being transported out-of-state due to the fact that the standards for used oil are much less stringent outside of California. Any other facilities that have been subjected to a generic PCB testing requirement should be granted relief for used oil destined for in-state recycling. The level of regulation and its associated costs should be crafted to match the need and the benefit.

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D/K greatly appreciates your consideration of this petition for review of the PCB testing requirement in the American Oil Permit. If you have any questions or require additional information, please do not hesitate to contact me.

Very truly yours,

//original signed by//

Jodi Smith  
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

SJS:eav

cc: Bruce Demenno, Demenno/Kerdoon  
Rosemary Domino, Asbury Environmental  
Mohinder Sandhu, Dept. of Toxic Substances Control  
Alfred Wong, Dept. of Toxic Substances Control

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