

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

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In the Matter of:	)	Docket <b>HWCA 07/08-P003</b>
Advanced Environmental, Inc.	)	ORDER PARTIALLY GRANTING
13579 Whittram Avenue	)	PETITION FOR REVIEW
Fontana, California 92335	)	
EPA ID No. CAT 080 025 711	)	California Code of Regulations,
	)	Title 22, section 66271.18

**I. INTRODUCTION**

On September 24, 2007, the Department of Toxic Substances Control (DTSC) issued a Standardized Hazardous Waste Facility Permit (Permit) decision to Advanced Environmental, Inc. (AEI), a storage and treatment facility located on 13579 Whittram Avenue, Fontana, California. On October 23, 2007, AEI (Petitioner) filed a petition for review (appeal) of the DTSC's final permit decision.

The Petitioner appeals provisions in the final permit on several grounds. First, since the issuance of the draft permit and AEI's subsequent comments, DTSC made numerous revisions to the language of the permit which were never communicated to AEI or made available to the public for review. Second, the Petitioner is seeking review of objectionable permit conditions identified in earlier comments.

This Order grants the Petitioner's petition for review of the following provisions within the Permit's Special Conditions as follows:

- Part V Condition N Used Oil - Total Halogen Testing (*comments 4-13*), and
- Part V Condition O Used Oil - PCBs Testing (*comments 14-20*).

This Order denies the Petitioner's petition for review of comments 1 thru 3 and comment 21.

DTSC will issue a public notice that will announce this decision, establish a briefing schedule and state that any interested may file a written argument.

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## II. JURISDICTION

DTSC has jurisdiction over hazardous waste facility permits and the imposition of conditions on such permits pursuant to the California Health and Safety Code, section 25200, and appeal of permits pursuant to California Health and Safety Code, section 25186.1(b)(1) and California Code of Regulations, title 22, section 66271.18.

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## III. BACKGROUND

During the pendency of this permit **appeal**, the permit decision has been stayed pursuant to California Code of Regulations, title 22, sections 66271.14(b)(2) and 66271.15. During the pendency of this appeal, AEI may continue to operate the Facility under the terms and conditions of the Interim status permit issued by DTSC in 1991.

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## IV. FACILITY BACKGROUND

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### A. FACILITY DESCRIPTION

**LOCATION:** AEI is located in an area zoned industrial by the City of Fontana. The facility is located near the California Speedway and is north of the Metrolink railroad tracks. The nearest residence is about ¼ mile from AEI. The nearest elementary school is 1.6 miles and the nearest day-care center is 2.4 miles from AEI.

### B. PERMITTED HAZARDOUS WASTESTREAMS AND MANAGEMENT UNITS/ACTIVITIES:

Current operations consist of storage of liquid wastes in 15 waste storage tanks, with a total maximum permitted capacity of 423,240 gallons. Hazardous wastes managed at AEI are primarily used oil, oily wastes and wastewater, oily solids and used anti-freeze. The acceptance criteria require that wastes are analyzed for physical and chemical properties onsite, or at an offsite State certified laboratory. Incoming liquid waste in 2,000 gallon tanker trucks is pumped into storage tanks through a pump and piping system. Each pump uses a suction strainer to filter and remove any solid debris. Incoming oily solids are either transferred into roll-off bins or 55-gallon drums. Tank contents are unloaded into larger 6,000 gallon tanker trucks for shipment to offsite recycling or disposal facilities.

1 The Standardized Permit issued on October 23, 2007, allows AEI to continue to  
2 operate, increase the number of permitted units from 15 to 19, increase the total  
3 capacity by 49,320 gallons, close specified tank areas, and relocate specified tanks to a  
4 new tank area. The new waste tank farm will consist of 19 hazardous waste storage  
5 tanks with maximum permitted capacity of 472,560 gallons. Of the 19 tanks, 14 will be  
6 new and five (5) existing tanks will be relocated to the new waste tank farm.

7 **C. FACILITY HISTORY:**

8 Historically, AEI began operating under ownership of Lakewood Oil Company  
9 (Lakewood) in the late 1960's and early 1970's as a collection and treatment center for  
10 used motor oil. The facility used heat to separate oil and water, producing a fuel oil. In  
11 1982, DTSC (then the Department of Health Services) allowed Lakewood to refine and  
12 store waste oil and treat and dispose wastewater generated at the facility. In  
13 September 1989, Lakewood was sold to Petroleum Recycling Corporation (PRC). In  
14 1991, DTSC issued an Interim Status Document (ISD) to PRC, allowing for treatment of  
15 hazardous wastes using filtration, distillation and separation. In 1995, AEI acquired  
16 PRC. In 1999, AEI applied to the DTSC for a Standardized Permit.

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19 **V. PERMIT APPEAL PROCESS**

20 Pursuant to California Code of Regulations, title 22, section 66271.18(a), the  
21 period for filing a petition for review (appeal) of this final Permit decision ended on  
22 September 23, 2007. One petition for review was received on or before that date from  
23 AEI. Pursuant to California Code of Regulations, title 22, sections 66271.14(b)12) and  
24 66271.15, as an existing/operating facility, the permit is stayed until DTSC completes its  
25 review of the appeal to determine which, if any, of the issues raised in the appeal meet  
26 the criteria for review pursuant to California Code of Regulations, title 22, section  
27 66271.18.

1 **VI. STANDARD OF REVIEW**

2 California Code of Regulations, title 22, section 66271.1 8(a), provides that a  
3 person who did not file comments or participate in the public hearing on the draft permit  
4 may petition the DTSC for review of the final permit decision, but only with respect to  
5 those conditions in the final permit decision that differ from the draft permit decision.

6 In addition, those persons who filed comments, or participated in the public  
7 hearing, on a draft permit decision (during the public comment period for the draft permit  
8 decision) may petition DTSC to review any condition of the final permit decision to the  
9 extent that the issues raised in the petition for review were also raised during the public  
10 comment period, including the hearing for the draft permit decision. Section 66271.1  
11 8(a) also provides, in pertinent part, that:

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

- 16 (1) a finding of fact or conclusion of law which is clearly erroneous; or  
17 (2) an exercise of discretion or an important policy consideration which the  
18 Department should, in its discretion, review."

19 California Code of Regulations, title 22, section 66271.12, specifies the extent to  
20 which issues are required to be raised during the public comment period for a draft  
21 permit decision. Specifically, this section states that "All persons, including applicants,  
22 who believe any condition of a draft permit is inappropriate or that the Department's  
23 tentative decision to deny an application or prepare a draft permit is inappropriate, must  
24 raise all reasonably ascertainable issues and submit all reasonably available arguments  
25 and factual grounds supporting their position..."

26 **VII. FINDINGS**

27 The Petitioner submitted comments on the draft permit during the public  
28 comment period, therefore, the Petitioner has standing to petition for review any issue  
raised during the public comment period on the draft Permit, as well as any issues that  
pertain to changes from the draft to the final Permit.

1 **Appeal Comment 1:**

2 **Part V., Condition C.**

3 This condition of the permit discusses the phase-in and phase-out of various tank  
4 units at the facility and states that “[t]he Permittee shall not operate any phase of Unit  
5 #2 until the Permittee has ceased operating old Units #8, #9, and #12.” This restriction  
6 is unreasonable, unnecessary and inconsistent with a transition between old and new  
7 units. Unit #8 will become Unit #11 in the new permit, and Units #9 and #12 will be  
8 taken out of service completely. Even if AEI were to operate all tanks in Units #2, #8,  
9 #9 and #12 simultaneously, they would not exceed the permitted storage capacity for  
10 the facility. Further, the secondary containment for all of the tanks in  
11 Unit #2 will be constructed prior to the construction of any of the tanks which will be  
12 placed inside of it. Therefore, AEI must be able to begin operating tanks in Unit #2 in  
13 phases, as the tanks are constructed and subsequently certified, and at the same time  
14 tanks in Units #9 and #12 are being taken out of service.

15 AEI also requests a change or clarification to the use of the word “operating” in  
16 this condition. This condition also states: “[t]he Permittee shall not operate new Unit #3  
17 until it has ceased operating old Unit #11”, “[t]he Permittee shall not operate new  
18 Unit #4 until it has ceased operating old Unit #10”, “[t]he Permittee shall not operate  
19 new Unit #5 until it has ceased operating Old Unit #10.” These restrictions, if literally  
20 applied, are unreasonable, unnecessary and inconsistent with a transition between old  
21 and new units. AEI does not understand DTSC’s reasoning for restricting the operation  
22 of new Units #3, #4, and #5 until old Units #11 and #10 have ceased operating. Even if  
23 AEI were to operate all of the tanks in Units #1, #3, #4, #5, #10 and #11 simultaneously,  
24 they would not exceed the permitted storage capacity for the facility. Therefore, AEI  
25 must be allowed to have waste being stored in tanks in old Units #10 and #11 when  
26 they begin operating new Units #3, #4 and #5. However, once new  
27 Units #3, #4 and #5 begin operating, AEI will not receive any more waste into Units #10  
28 and #11. AEI’s requests that this condition be revised to state:

“The Permittee may begin operating phases of Unit #2 as the tanks are constructed and  
subsequently certified. The Permittee shall not operate new Unit #3 until it has ceased  
receiving waste in old Unit #11. The Permittee shall not operate new Unit #4 until it has  
ceased receiving waste in old Unit #10. The Permittee shall not operate new Unit #5  
until it has ceased receiving waste in old Unit #10.”

20 **Response:**

21 The language contained in the final permit is verbatim from the draft permit.  
22 Further comments were not raised during the comment period by the Petitioner nor  
23 other commentors related to the phase-in and phase-out of various tanks, or the need  
24 for clarification on the use of the term “operating“. DTSC finds that the Petitioner has  
25 failed to meet the standards of review. Therefore, DTSC denies the request for review  
26 of this permit condition. This order constitutes DTSC’s final decision.

1 **Appeal Comment 2:**

2 **Part V., Condition E.**

3 The condition states: “[t]he Permittee shall not accept or store any RCRA  
4 hazardous waste.” While AEI is not permitted to accept RCRA hazardous wastes  
5 generated off-site, there is the possibility that RCRA hazardous wastes could be  
6 generated on-site as part of maintenance operations (e.g., painting of tanks). Any  
7 RCRA hazardous wastes generated on-site would need to be accumulated (i.e., stored)  
8 pursuant to the requirements of 22 CCR 66262.34 prior to shipment off-site to a  
9 hazardous waste management facility permitted to receive RCRA hazardous wastes.  
10 Therefore, this condition must be revised to clarify that AEI may store any RCRA  
11 hazardous wastes which may be generated on-site. AEI requests that this condition be  
12 revised to state:

13 “The Permittee shall not accept or store any RCRA hazardous wastes generated off-  
14 site.”

15 **Response:**

16 DTSC has determined with respect to comment 2 that the permit condition  
17 stating “the permittee shall not accept or store any RCRA hazardous waste”, is  
18 consistent with state and federal laws and is therefore upholding the permit condition.  
19 Further, pursuant to California Code of Regulations, title 22, section 66262.34(c), a  
20 generator who accumulates hazardous waste for more than 90 days is an operator of a  
21 storage facility and is subject to the requirements of chapters 14 and 15 and permit  
22 requirements of chapter 20. DTSC denies the request for review of this permit  
23 condition. This order constitutes DTSC’s final decision.

24 **Appeal Comment 3:**

25 **Part V., Condition M.6.**

26 This condition states: “[t]he Permittee shall log the results of all tests performed  
27 and the documents shall be retained for at least three (3) years at the facility for  
28 inspection.” AEI requests clarification of what is meant by the term “log”. AEI assumes  
the term “log” means “record” in the operating record. AEI records the laboratory test  
results on the receiving ticket for a particular shipment of waste received. This receiving  
ticket, with laboratory results attached, as well as the manifest(s) used for the particular  
shipment, becomes part of the operating record for the facility, as required by 22 CCR  
66264.73. AEI requests that this condition be revised to state:

“The Permittee shall maintain written results of all tests performed in the facility  
operating record, and the documents shall be retained for at least three (3) years at the

1 Facility for inspection.”

2 **Response:**

3 The language contained in the final permit is verbatim from the draft permit.  
4 Further comments were not raised during the comment period by the Petitioner nor  
5 other commentors on the need for clarification of the term “log”. DTSC finds that the  
6 Petitioner has failed to meet the standard of review. Therefore, DTSC denies the  
7 request for review of this permit condition. This order constitutes DTSC’s final  
8 decision.

9 **Appeal Comment 4:**

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

11 This condition states: “[t]he Permittee may rebut the rebuttable presumption  
12 pursuant to California Code of Regulations, title 22, section 66279.10(b), (b)(1) and  
13 (2) only through analytical testing in accordance with the test methods specified in  
14 California Code of Regulations, title 22, section 66279.90(b) or by complying with  
15 conditions N.2.c.(1)(B) through (G) below, which are the only other means of  
16 demonstrating that the used oil does not contain halogenated hazardous waste for the  
17 purposes of California Code of Regulations, title 22, section 66279.10(b), (b)(1) and  
18 (2) and this Permit.”

19 22 CCR, section 66279.90(b) specifies four test methods that may be used to  
20 test used oil for halogens: Method 8010B, Method 8021A, Method 8240B, Method  
21 8260B. EPA SW-846 test methods are often updated and provided with updated  
22 nomenclature to indicate a new and approved version of the same test method.  
23 However, 22 CCR 66279.90(b) is not often revised to list the approved updated  
24 versions of the test methods listed in that section. For example, EPA has recently  
25 adopted test method 8021B to test used oil for halogens. EPA test method 8021B is an  
26 updated and approved version of EPA test method 8021A. While 22 CCR 66279.90(b)  
27 does not specifically list EPA test method 8021B, its use should be allowed by DTSC  
28 due to the fact that it is simply an updated and approved version of EPA test method  
8021A. Therefore, AEI requests that this condition be revised to state:

23 “[t]he Permittee may rebut the rebuttable presumption pursuant to California Code of  
24 Regulations, title 22, section 66279.10(b), (b)(1) and (2) only through analytical testing  
25 in accordance with the test methods specified in California Code of Regulations, title 22,  
26 section 66279.90(b), including updated and approved versions of the test methods  
27 specified in section 66279.90(b) which have been approved by EPA, or by complying  
28 with conditions N.2.c.(1)(B) through (G) below, which are the only other means of  
demonstrating that the used oil does not contain halogenated hazardous waste for the  
purposes of California Code of Regulations, title 22, section 66279.10(b), (b)(1) and  
(2) and this Permit.”

1 **Response:**

2           Although the language contained in the final permit was provided in the response  
3 to comments on the draft permit, an opportunity to comment on the language has not  
4 been provided. DTSC finds that the final permit language differs substantially from the  
5 draft permit and thus grants review of this permit condition.

6 **Appeal Comment 5:**

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8 **Part V., Condition N.2.c.(1)(B)**

9           This condition states: “[t]he Permittee shall obtain from the transporter a copy of  
10 the Generator’s Waste Profile Worksheet (GWPW), attached to the manifest.” AEI will  
11 not rebut the presumption regarding high halides unless the generator provides  
12 analytical prepared by a laboratory certified in accordance with the Environmental  
13 Laboratory Accreditation Program by using the test methods specified in California  
Code of Regulations, title 22, section 66279.90(b). Thus, the permit condition should  
require that the analytical results used to rebut the presumption be attached to the  
manifest.

14           In addition, the GWPW and the analytical used to rebut the presumption are not  
15 attached to the manifest. Those documents may accompany the load or precede the  
16 receipt of the load. Thus the reference to “attached to the manifest” must be removed.  
17 These documents may also be provided by the generator. Thus, a reference to the  
generator must be included. AEI requests that this condition be revised to state:

18 “The Permittee shall obtain from the generator or transporter a copy of the Generator’s  
19 Waste Profile Worksheet (GWPW) and the analytical results for the halogen content  
used to rebut the presumption.”

20 **Response:**

21           Although the language contained in the final permit was provided in the response  
22 to comments on the draft permit, an opportunity to comment on the language has not  
23 been provided. DTSC finds that the final permit language differs substantially from the  
24 draft permit and thus grants review of this permit condition.

25 **Appeal Comment 6:**

26 **Part V., Condition N.2.c.(1)(C)**

27           This condition states: “The Permittee shall review this documentation and confirm  
28 in the operating log that the GWPW; 1) is less than 365 days old, ii) is based on a  
representative sample of the waste, and iii) was analyzed by a laboratory certified in

1 accordance with the Environmental Laboratory Accreditation Program by using the test  
2 methods specified in California Code of Regulations, title 22, section 66279.90(b).”

3 First, AEI objects to the term “confirm in the operating log”. The GWPW which  
4 accompanies the manifest contains the date that it was last annually renewed. The  
5 person receiving the shipment of waste for AEI can therefore verify that the GWPW is  
6 less than 365 days old without further reference to a log or elsewhere in the operating  
7 record. Further, in the future AEI’s electronic waste tracking system will electronically  
8 alert the proper personnel before the profile is due to be renewed each year.

9 Second, AEI objects to the requirement that AEI confirm that the GWPW was  
10 based on a representative sample of the waste. AEI has no means of confirming that  
11 the generator’s waste analysis was based on a representative sample of the waste, and  
12 should not be required to do so. AEI cannot force the generators to properly comply  
13 with the waste identification requirements of 22 CCR section 66262.11. Only DTSC and  
14 the Certified Unified Program Agency can enforce the regulatory requirements for  
15 generators. AEI must rely on the generator’s legal obligation to properly comply with  
16 waste identification requirements. The waste identification requirements of 22 CCR  
17 section 66262.11(b)(1) require that the waste is tested “according to the methods set  
18 forth in article 3 of chapter 11 of this division...” Article 3 of chapter 11 requires that  
19 generators follow the testing methods in the U.S. Environmental Protection Agency’s  
20 “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.” Each method  
21 contained in this manual describes the type of sample which is required to properly run  
22 the test method. Therefore, this requirement to confirm that the GWPW was based on a  
23 representative sample of the waste must be removed.

24 Third, the scope of the requirement for analytical prepared by a laboratory  
25 certified in accordance with the Environmental Laboratory Accreditation Program is  
26 overbroad. The only analytical that must be prepared by a laboratory certified in  
27 accordance with the Environmental Laboratory Accreditation Program is the analytical  
28 used to rebut the presumption. Thus, the scope of the analytical requirement must be  
clarified. AEI requests that this condition be revised to state:

“The Permittee shall review this documentation... and confirm that the GWPW is less than  
365 days old, and that the halogen content specified on the analytical used to rebut the  
presumption was prepared by a laboratory certified in accordance with the  
Environmental Laboratory Accreditation Program by using the test methods specified in  
California Code of Regulations, title 22, section 66279.90(b).”

**Response:**

Although the language contained in the final permit was provided in the response  
to comments on the draft permit, an opportunity to comment on the language has not  
been provided. DTSC finds that the final permit language differs substantially from the  
draft permit and thus grants review of this permit condition.

1 **Appeal Comment 7:**

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

3 This condition states: “[t]he Permittee shall review the documentation discussed  
4 above and enter into the operating log the reason that the rebuttable presumption can  
5 be rebutted pursuant to California Code of Regulations, title 22, section 66279.10(b),  
6 (b)(1) and (2).” The requirement to enter into the “operating log” the reason that the  
7 rebuttable presumption can be rebutted is redundant and unnecessary. A generator  
8 may sign a separate Waste Oil Certification letter certifying that its oil has been rebutted  
9 per 22 CCR sections 66279.10(b) (1) and (b) (2) and that the used oil has not been  
10 mixed with any halogenated hazardous wastes. Such letters accompany the GWPW  
11 and the manifest or are submitted in advance. For used oils containing greater than  
1,000 parts per million (“ppm”) of halogens, AEI’s review of this certification statement is  
an appropriate procedure to rebut the presumption. The analytical results (as well as  
the manifest and GWPW) are maintained in the operating record. Therefore, this  
condition should be revised to properly reflect the procedure used to rebut the  
presumption and record documentation in the operating record. AEI requests that this  
condition be revised to state:

12 “The Permittee shall review the documentation discussed above and place it into the  
13 operating record. This documentation must contain a certification made by the  
14 generator that the used oil was not mixed with any halogenated hazardous wastes so  
15 that the rebuttable presumption may be rebutted pursuant to California Code of  
Regulations, title 22, section 66279.10(b), (b)(1) and (2).”

16 **Response:**

17 Although the language contained in the final permit was provided in the response  
18 to comments on the draft permit, an opportunity to comment on the language has not  
19 been provided. DTSC finds that the final permit language differs substantially from the  
20 draft permit and thus grants review of this permit condition.

21 **Appeal Comment 8:**

22 **Part V., Condition N.2.c.(1)(A) and (2)**

23 This condition states: “[t]he Permittee may rebut the rebuttable presumption  
24 pursuant to California Code of Regulations, title 22, section 66279.10(b), (b)(1) and  
25 (2) only through analytical testing in accordance with the test methods specified in  
26 California Code of Regulations, title 22, section 66279.90(b) or by complying with  
27 conditions N.2.c.(1)(B) through (G) below, which are the only other means of  
28 demonstrating that the used oil does not contain halogenated hazardous waste for the  
purposes of California Code of Regulations, title 22, section 66279.10(b), (b)(1) and  
(2) and this Permit.”

1 22 CCR 66279.90(b) specifies four test methods that may be used to test used  
2 oil for halogens: Method 8010B, Method 8021A, Method 8240B, Method 8260B. EPA  
3 SW-846 test methods are often updated and provided with updated nomenclature to  
4 indicate a new and approved version of the same test method. However, 22 CCR  
5 66279.90(b) has not been revised to list the updated and approved versions of the test  
6 methods listed in that condition. For example, AEI uses EPA test method 8021B to test  
7 used oil for halogens. EPA test method 8021B is an updated and approved version of  
8 EPA test method 8021A. While 22 CCR 66279.90(b) does not specifically list EPA test  
9 method 8021B, its use should be allowed by DTSC due to the fact that it is simply an  
10 updated and approved version of EPA test method 8021A. Therefore, AEI request that  
11 this condition be revised to state:

12 “[t]he Permittee may rebut the rebuttable presumption pursuant to California Code of  
13 Regulations, title 22, section 66279.10(b), (b)(1) and (2) only through analytical testing  
14 in accordance with the test methods specified in California Code of Regulations,  
15 title 22, section 66279.90(b), including updated and approved versions of the test  
16 methods specified in California Code of Regulations, title 22, section 66279.90(b)  
17 approved by EPA, or by complying with conditions N.2.c.(1)(B) through (G) below,  
18 which are the only other means of demonstrating that the used oil does not contain  
19 halogenated hazardous waste for the purposes of California Code of Regulations,  
20 title 22, section 66279.10(b), (b)(1) and (2) and this Permit.”

21 **Response:**

22 Although the language contained in the final permit was provided in the response  
23 to comments on the draft permit, an opportunity to comment on the language has not  
24 been provided. DTSC finds that the final permit language differs substantially from the  
25 draft permit and thus grants review of this permit condition.

26 **Appeal Comment 9:**

27 **Part V., Condition N.2.c.(3)**

28 This condition states: “Option 3. For used oil received from multiple generators  
(Consolidated Loads) and when the transporter provides fingerprint test data for each  
generator using EPA Test Method 9077.” The parenthetical reference to “(Consolidated  
Loads)” creates an implication that the category refers to shipments arriving using a  
consolidated manifest. Shipments received by AEI from multiple generators are not  
always “consolidated loads” where only a consolidated manifest was used. AEI  
receives shipments from multiple generators under the following three scenarios:

The shipment (truck load) arrives under one or more consolidated manifests;

The entire shipment is comprised of used oil from multiple generators, with each  
generators portion having its own manifest;

The shipment is comprised of a combination of used oil under a one or more

1 consolidated manifests and used oil from multiple generators, with each  
2 generators portion having its own manifest.

3 Therefore, this condition must be revised to eliminate any implication that used  
4 oil received from multiple generators is limited to a consolidated load using a  
5 consolidated manifest. AEI requests that this condition be revised to state: "Option 3.  
6 For used oil received from multiple generators and when the transporter provides  
7 fingerprint test data for each generator using EPA Test Method 9077."

8 **Response:**

9 Although the language contained in the final permit was provided in the response  
10 to comments on the draft permit, an opportunity to comment on the language has not  
11 been provided. DTSC finds that the final permit language differs substantially from the  
12 draft permit and thus grants review of this permit condition.

13 **Appeal Comment 10:**

14 **Part V., Condition N.2.c.(3)(B)(i)**

15 This condition states: "The Permittee shall obtain the fingerprint test data  
16 referenced in N.2.c.(3) above from the transporter; and (i) For any generator whose  
17 used oil has a concentration that exceeds 1000 ppm total halogens, the Permittee shall  
18 receive and have on file proper documentation and follow the procedures in option 1  
19 above."

20 This condition incorporates the problems identified in Option 1, which further  
21 emphasized the need to cure those problems. Our appeal of those conditions  
22 discussed above is incorporated herein.

23 **Response:**

24 Although the language contained in the final permit was provided in the response  
25 to comments on the draft permit, an opportunity to comment on the language has not  
26 been provided. DTSC finds that the final permit language differs substantially from the  
27 draft permit and thus grants review of this permit condition.  
28

1 **Appeal Comment 11:**

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

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

7 For the same reasons described above for Part V., Condition N.2.c.(3) regarding  
8 the three scenarios under which AEI may receive used oil from multiple generators, this  
9 condition must be revised so that used oil received from multiple generators is not  
10 restricted to consolidated loads using a consolidate manifest. AEI requests that this  
11 condition be revised to state:

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

16 **Response:**

17 Although the language contained in the final permit was provided in the response  
18 to comments on the draft permit, an opportunity to comment on the language has not  
19 been provided. DTSC finds that the final permit language differs substantially from the  
20 draft permit and thus grants review of this permit condition.

21 **Appeal Comment 12:**

22 **Part V., Condition N.2.c.(4)(A)(ii)**

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

26 This condition incorporates the problems identified in Option 1, which further  
27 emphasized the need to cure those problems. Our appeal of those conditions  
28 discussed above is incorporated herein.

29 **Response:**

30 Although the language contained in the final permit was provided in the response  
31 to comments on the draft permit, an opportunity to comment on the language has not  
32 been provided. DTSC finds that the final permit language differs substantially from the  
33 draft permit and thus grants review of this permit condition.

1 **Appeal Comment 13:**

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

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

10 First, for the same reasons described above for Part V., Condition N.2.c.(3) and  
11 Part V., Condition N.2.c.(4) regarding the three scenarios under which AEI may receive  
12 used oil from multiple generators, this condition needs to be revised so that used oil  
13 received from multiple generators is not restricted to consolidated load using a  
14 consolidate manifest.

15 Second, AEI objects to the permit condition's requirement that analytical data be  
16 "accompanied by a determination that the rebuttable presumption is rebutted pursuant  
17 to California Code of Regulations, title 22, section 66279.10(b), (b)(1) and (2)." 22 CCR  
18 section 66279.10(b) states that persons may rebut the presumption by "demonstrating  
19 through analytical testing or other means of demonstration that the used oil does not  
20 contain such hazardous waste." According to this section, and AEI's own procedures,  
21 the analytical test results themselves are the determination that the presumption can be  
22 rebutted. These analytical results are also placed in the facility operating record.  
23 Therefore, there is no need to create an extra "determination" document that is not  
24 called for by the regulations. Accordingly, this requirement should be deleted. AEI  
25 requests that this condition be revised to state:

26 "Option 5. For used oil received from multiple generators, and when the  
27 transporter cannot provide fingerprint data or retained samples as discussed in Options  
28 3 and 4 above, the Permittee may rebut the presumption only through analytical testing  
in accordance with the test methods specified in California Code of Regulations, title  
22, section 66279.90(b) and pursuant to the procedures and criteria described in  
California Code of Regulations, title 22, section 66279.10(b), (b)(1) and (2)."

22 **Response:**

23 Although the language contained in the final permit was provided in the response  
24 to comments on the draft permit, an opportunity to comment on the language has not  
25 been provided. DTSC finds that the final permit language differs substantially from the  
26 draft permit and thus grants review of this permit condition.

1 **Appeal Comment 14:**

2 **Part V., Condition O.2.**

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

9 AEI appeals the alternative testing condition set out in the permit. This provision  
10 allows only 2 methods for testing for PCBs. Specifically, AEI should not be limited to  
11 testing an onsite storage tank or requiring a receiving facility to test each individual truck  
12 for PCBs. AEI sends used oil to the DeMenno/Kerdoon recycling facility in Compton.  
13 The D/K facility consolidates individual loads of used oil into receiving tanks and tests  
14 those tanks for PCBs as specified in the facility Waste Analysis Plan. It is impractical,  
15 unnecessary and unfair to require receiving facilities permitted by DTSC to test AEI's  
16 used oil on a truck by truck basis. This is inconsistent with D/K's existing permits and  
17 will result in the facility being required to comply with two overlapping sets of PCB  
18 testing requirements. In the alternative, it is unfair to AEI to for either test onsite or  
19 require D/K to apply a different testing protocol than that specified in its approved WAP.

20 This places AEI at a competitive disadvantage with transporters who otherwise  
21 can take their oil directly to D/K or other receiving facilities. We note that our firm has  
22 submitted comments on behalf of D/K in their appeal of the American Oil permit that has  
23 raised numerous environmental and regulatory issues regarding a similar PCB testing  
24 procedure. We hereby incorporate those comments and the policy arguments and legal  
25 objections raised therein by reference and attach those letters hereto. The permit  
26 should acknowledge the existing in-state management scheme and allow waste to be  
27 tested at permitted in-state facilities pursuant to the facility WAP. It may make sense to  
28 require out-of-state facilities to test individual trucks because the oil could legally be  
29 commingled with high PCB oil. Or it may make sense to require trucks bound for out-of-  
30 state facilities to be tested on a truck by truck basis for similar reasons. It makes no  
31 sense to do so for AEI, which sends all of its oil to D/K.

32 AEI requests that this condition or Condition O.2.b be revised to allow AEI to  
33 send used oil to D/K and be tested for PCBs according to the facility's WAP.

34 **Response:**

35 Although the language contained in the final permit was provided in the response  
36 to comments on the draft permit, an opportunity to comment on the language has not  
37 been provided. DTSC finds that the final permit language differs substantially from the  
38 draft permit and thus grants review of this permit condition.

1 On October 19, 2007, DTSC issued its final permit decision on American Oil  
2 Company. For the reasons set forth in the final order, and incorporated by reference,  
3 DTSC denied DIK's Appeal.

4 **Appeal Comment 15:**

5 **Part V., Condition O.2.a(4)**

6 This condition states: "If the used oil contains PCBs at a concentration of 2 ppm  
7 or greater, a second sample shall be obtained and tested after cleaning the sampling  
8 equipment using the permanganate cleanup procedure." This permit condition does not  
9 allow for use of another separate piece of sampling equipment. There is no reason to  
10 require the second sample to be obtained using the same piece of sampling equipment  
11 which was used to collect the first sample. The only standard that should be specified is  
12 that any additional samples must be taken using sampling equipment that has been  
13 cleaned using the permanganate cleaning procedure. Therefore, this condition must be  
14 revised to reflect this necessary sampling flexibility. Also, pursuant to TSCA  
15 regulations, Stoddard solvent should be used to decontaminate equipment  
16 contaminated with PCBs, not permanganate. AEI requests that this condition be  
17 revised to state:

18 "If the used oil contains PCBs at a concentration of 2 ppm or greater, a second  
19 sample shall be obtained and tested. The second sample shall be obtained using  
20 sampling equipment that is new or has been cleaned using an appropriate  
21 decontamination procedure".

22 **Response:**

23 Although the language contained in the final permit was provided in the response  
24 to comments on the draft permit, an opportunity to comment on the language has not  
25 been provided. DTSC finds that the final permit language differs substantially from the  
26 draft permit and thus grants review of this permit condition.

27 **Appeal Comment 16:**

28 **Part V., Condition O.2.b.(1) and b.(2)**

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

- 1 (1) Take a sample for PCBs testing directly from the Permittee's used oil load and test  
the Permittee's used oil load separately from any other load.
- 2 (2) Do not unload the truck or commingle the Permittee's used oil load with any other  
used oil at the receiving facility until PCBs testing indicated that the Permittee's load  
3 does not contain PCBs at a concentration of 2 ppm or greater."

4 As noted above, AEI sends its used oil to D/K. The conditions in Part V.,  
5 Condition O.2.b.(1)and(b)(2) are inconsistent with D/K's WAP. It is inappropriate for  
DTSC to require AEI to provide instructions to a permitted hazardous waste facility to  
6 handle waste in a manner inconsistent with its WAP. It is not an appropriate response  
to state that AEI can test the waste onsite. While true, that position places AEI in a  
7 different position from other D/K customers and could result in costs not imposed on  
other used oil management companies.

8

9 In addition, as noted in comments submitted on behalf of D/K in the American Oil  
appeal, the standards imposed in these conditions also constitutes an underground  
10 regulation with potentially significant environmental consequences due to the failure to  
comply with the APA and CEQA. AEI requests that these conditions be revised to state:

11 "If the Permittee elects to send used oil to a recycling facility that has not been issued a  
12 treatment permit by DTSC, the Permittee shall provide written instructions to the  
receiving facility that directs it to test the used oil for PCBs to ensure that the used oil  
13 load does not contain PCBs at a concentration of 2 ppm or greater. The instructions  
shall, at a minimum, direct the receiving facility to do all the following:

14 (1) Take a sample for PCBs testing directly from the Permittee's used oil load 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 other  
used oil at the receiving facility until PCBs testing indicated that the Permittee's load  
16 does not contain PCBs at a concentration of 2 ppm or greater.

17 If the Permittee elects to send the used oil to a recycling facility issued a treatment  
18 permit by DTSC and have the facility test the used oil for PCBs, the receiving facility  
shall comply with the provisions of its approved Waste Analysis Plan."

19 **Response:**

20 Although the language contained in the final permit was provided in the response  
21 to comments on the draft permit an opportunity to comment on the language has not  
22 been provided. DTSC finds that the final permit language differs substantially from the  
23 draft permit and thus grants review of this permit condition.

24

25 On October 19, 2007, DTSC issued its final permit decision on American Oil  
Company. For the reasons set forth in the final order, and incorporated by reference,  
26 DTSC denied DIK's Appeal.

1 **Appeal Comment 17:**

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

3 This condition states, "Write the manifest number on the written test results for  
4 the used oil that was tested." As noted above, AEI sends its used oil to D/K. The  
5 conditions in Part V., Condition O.2.b.(4) is inconsistent with D/K's WAP. It is  
6 inappropriate for DTSC to require AEI to provide instructions to a permitted hazardous  
7 waste facility to handle waste in a manner inconsistent with its WAP. It is not an  
appropriate response to state that AEI can test the waste onsite. While true, that  
position places AEI in a different position from other D/K customers and could result in  
costs not imposed on other used oil management companies.

8 AEI requests that this condition be conformed to apply only to receiving facilities  
9 that do not hold DTSC issued permits.

10 **Response:**

11 Although the language contained in the final permit was provided in the response  
12 to comments on the draft permit, an opportunity to comment on the language has not  
13 been provided. DTSC finds that the final permit language differs substantially from the  
14 draft permit and thus grants review of this permit condition.

15 **Appeal Comment 18:**

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

17 This condition states: "Provide the Permittee with written test results within  
18 24 hours after the test has been performed. The written test results shall clearly show  
whether or not the used oil loads contains PCBs at a concentration of 2 ppm or greater."

19 This requirement is unnecessary and there is no regulatory requirement to  
20 support it. There is no need for the used oil receiving (recycling) facility to provide  
21 written test results within 24 hours. Therefore, this condition must be removed entirely  
from the permit.

22 **Response:**

23 Although the language contained in the final permit was provided in the response  
24 to comments on the draft permit an opportunity to comment on the language has not  
25 been provided. DTSC finds that the final permit language differs substantially from the  
26 draft permit and thus grants review of this permit condition.  
27  
28

1 **Appeal Comment 19:**

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

3 This condition states: "Reject the load if the test results show that the used oil  
4 contains PCBs at a concentration of 2 ppm or greater." This standard adopts a  
5 standard of general application that is unnecessary and there is no regulatory  
6 requirement to support it. The standard for used oil is 5ppm. This standard is  
inconsistent with both California and federal regulatory schemes for used oil. Therefore,  
this condition must be removed entirely from the permit.

7 **Response:**

8 Although the language contained in the final permit was provided in the response  
9 to comments on the draft permit, an opportunity to comment on the language has not  
10 been provided. DTSC finds that the final permit language differs substantially from the  
11 draft permit and thus grants review of this permit condition.

12 **Appeal Comment 20:**

13 **Part V., Condition O.2.b.(7)**

14 This condition states: "Provide a signed certification, under penalty of perjury, for  
15 each set of test results, to the Permittee stating that the receiving facility has followed all  
16 of the Permittee's written instructions for each used oil load received from the  
Permittee."

17 This standard adopts a standard of general application that is unnecessary and  
18 there is no regulatory requirement to support it. This standard is inconsistent with both  
19 California and federal regulatory schemes for used oil. Therefore, this condition must  
be removed entirely from the permit.

20 **Response:**

21 Although the language contained in the final permit was provided in the response  
22 to comments on the draft permit, an opportunity to comment on the language has not  
23 been provided. DTSC finds that the final permit language differs substantially from the  
24 draft permit and thus grants review of this permit condition.  
25  
26  
27  
28

1 **Appeal Comment 21:**

2 **Part V., Condition U.2.**

3 This condition states: "The Permittee shall completely empty the wastes from the  
4 tank and then pressure wash and/or steam clean the inside of the tank to remove all  
5 visible waste residues before the usage is changed." With respect to used oil and oily  
6 water, there is no reason to pressure wash or steam clean a tank before switching tank  
7 service between these wastes. These waste streams are all compatible petroleum/oil-  
8 based wastes that have met acceptance standards. AEI requests that DTSC only  
9 require these tanks to be completely emptied prior to switching service between these  
10 wastestreams. Further, pressure washing and/or steam cleaning of a used oil, oily  
11 waste, or contaminated petroleum products tanks unnecessarily creates more  
12 hazardous waste which must then be properly managed. AEI sees no need for this  
13 requirement and is confused as to why DTSC has required this type of tank cleaning  
14 when switching between petroleum/oil-based waste streams.

15 AEI requests that this condition be revised to state:

16 "The Permittee shall completely empty the wastes from the tank to remove all visible  
17 waste residues before the usage is changed."

18 **Response:**

19 The language contained in the final permit is verbatim from the draft permit.  
20 Further comments were not raised during the comment period by the petitioner nor  
21 other commentors related to this permit condition. DTSC finds that the Petitioner has  
22 failed to meet the standard of review and denies the request for review of this permit  
23 condition. This order constitutes DTSC's final decision.

24 **VIII. CONCLUSION**

25 For the reasons set forth above, DTSC grants the Petitioner's petition for review  
26 of the following provisions within the Permit's Special Conditions as follows:

27 Part V Condition N Used Oil - Total Halogen Testing (*comments 4-13*), and  
28 Part V Condition O Used Oil - PCBs Testing (*comments 14-20*).

For the reasons set forth above, DTSC denies the Petitioner's petition for review  
of comments 1 thru 3 and comment 21.

**IX. ORDER**

1 This Decision addresses only those Appeal Comments of the Petitioner that are  
2 granted further review by DTSC. During the pendency of this permit appeal, the permit  
3 is stayed pursuant to California Code of Regulations,  
4 title 22, sections 66271.14 (b)(2) and 66271.15. During the pendency of this appeal,  
5 AEI may continue to operate the Facility under the terms and conditions of the Interim  
6 Status Authorization issued by DTSC in 1991.  
7

8  
9 DATED: February 13, 2008

//original signed by//

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10 Peggy Harris, P.E., Chief  
11 Regulatory and Program Development Division  
12 Hazardous Waste Management Program  
13 Department of Toxic Substances Control  
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