

Atlanta  
Beijing  
Brussels  
Chicago  
Hong Kong  
London  
Los Angeles  
Milan  
New York  
Orange County  
Palo Alto  
Paris  
San Diego  
San Francisco  
Shanghai  
Stamford  
Tokyo  
Washington, DC

(916) 552-6830  
roberthoffman@paulhastings.com

October 23, 2007

26635.00019

**VIA E-MAIL WGIN@DTSC.CA.GOV  
& UPS OVERNIGHT**

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 Standardized Hazardous Waste Facility Permit  
(Series B) for Advanced Environmental, Inc., 13579 Whittram Avenue,  
Fontana, California 92335 (EPA ID # CAT 090025711)**

Dear Mr. Gin:

On behalf of Advanced Environmental, Inc., we are submitting this petition for review of certain conditions of the Final Series B Standardized Hazardous Waste Facility Permit (“Permit”) decision for Advanced Environmental, Inc. (“AEI”) issued by the Department of Toxic Substances Control (“DTSC”) on September 24, 2007.

AEI submitted comments to DTSC on the draft permit in April 2005, and some of the issues raised by AEI in those comments have been resolved to AEI’s satisfaction. However, 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. When AEI learned of the possibility of additional changes, AEI’s environmental manager contacted DTSC in an attempt to review and discuss them with DTSC staff. The request to review the permit language was denied and DTSC would not discuss them. Due to the fact that DTSC would not make the terms of the permit available for public comment or engage in a dialogue concerning these changes, AEI must raise its objections and concerns regarding these new changes to the permit at this time in a petition for review. AEI is also seeking review of objectionable permit conditions identified in earlier comments.

AEI has organized the issues raised in this petition by the sections in which they appear in the permit. The following are all issues for which AEI requests that DTSC exercise its discretion and review.

Watson Gin, Deputy Director

October 23, 2007

Page 2

**Part V., Condition C.**

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

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

**Part V., Condition E.**

The condition states: “[t]he Permittee shall not accept or store any RCRA hazardous waste.” While AEI is not permitted to accept RCRA hazardous wastes generated off-site, there is the possibility that RCRA hazardous wastes could be generated on-site as part of maintenance operations (e.g., painting of tanks). Any RCRA hazardous wastes generated

Watson Gin, Deputy Director  
October 23, 2007  
Page 3

on-site would need to be accumulated (i.e., stored) pursuant to the requirements of 22 CCR 66262.34 prior to shipment off-site to a hazardous waste management facility permitted to receive RCRA hazardous wastes. Therefore, this condition must be revised to clarify that AEI may store any RCRA hazardous wastes which may be generated on-site. AEI requests that this condition be revised to state:

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

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

This condition states: “[t]he Permittee shall log the results of all tests performed and the documents shall be retained for at least three (3) years at the facility for 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 Facility for inspection.”***

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

This condition states: “[t]he Permittee may rebut the rebuttable presumption pursuant to California Code of Regulations, title 22, section 66279.10(b), (b)(1) and (2) only through analytical testing in accordance with the test methods specified in California Code of Regulations, title 22, section 66279.90(b) or by complying 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.”

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

Watson Gin, Deputy Director

October 23, 2007

Page 4

approved version of EPA test method 8021A. Therefore, AEI requests that this condition be revised to state:

*"[t]he Permittee may rebut the rebuttable presumption pursuant to California Code of Regulations, title 22, section 66279.10(b), (b)(1) and (2) only through analytical testing in accordance with the test methods specified in California Code of Regulations, title 22, section 66279.90(b), including updated and approved versions of the test methods specified in section 66279.90(b) which have been approved by EPA, or by complying 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."*

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

This condition states: "[t]he Permittee shall obtain from the transporter a copy of the Generator's Waste Profile Worksheet (GWPW), attached to the manifest." AEI will not rebut the presumption regarding high halides unless the generator provides analytical 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). Thus, the permit condition should require that the analytical results used to rebut the presumption be attached to the manifest.

In addition, the GWPW and the analytical used to rebut the presumption are not attached to the manifest. Those documents may accompany the load or precede the receipt of the load. Thus the reference to "attached to the manifest" must be removed. 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:

*"The Permittee shall obtain from the generator or transporter a copy of the Generator's Waste Profile Worksheet (GWPW) and the analytical results for the halogen content used to rebut the presumption."*

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

This condition states: "The Permittee shall review this documentation and confirm 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 accordance with the Environmental Laboratory Accreditation Program by using the test methods specified in California Code of Regulations, title 22, section 66279.90(b)."

First, AEI objects to the term "confirm in the operating log". The GWPW which accompanies the manifest contains the date that it was last annually renewed. The person receiving the shipment of waste for AEI can therefore verify that the GWPW is less than

Watson Gin, Deputy Director  
October 23, 2007  
Page 5

365 days old without further reference to a log or elsewhere in the operating record. Further, in the future AEI's electronic waste tracking system will electronically alert the proper personnel before the profile is due to be renewed each year.

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

Third, the scope of the requirement for analytical prepared by a laboratory certified in accordance with the Environmental Laboratory Accreditation Program is overbroad. The only analytical that must be prepared by a laboratory certified in accordance with the Environmental Laboratory Accreditation Program is the analytical 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)."***

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

This condition states: "[t]he Permittee shall review the documentation discussed above and enter into the operating log the reason that the rebuttable presumption can be rebutted pursuant to California Code of Regulations, title 22, section 66279.10(b), (b)(1) and (2)." The requirement to enter into the "operating log" the reason that the rebuttable presumption can be rebutted is redundant and unnecessary. A generator may sign a separate Waste Oil Certification letter certifying that its oil has been rebutted per 22 CCR sections 66279.10(b) (1) and (b) (2) and that the used oil has not been mixed with any

Watson Gin, Deputy Director  
October 23, 2007  
Page 6

halogenated hazardous wastes. Such letters accompany the GWPW 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:

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

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

This condition states: “[t]he Permittee may rebut the rebuttable presumption pursuant to California Code of Regulations, title 22, section 66279.10(b), (b)(1) and (2) only through analytical testing in accordance with the test methods specified in California Code of Regulations, title 22, section 66279.90(b) or by complying 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.”

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

***“[t]he Permittee may rebut the rebuttable presumption pursuant to California Code of Regulations, title 22, section 66279.10(b), (b)(1) and (2) only through analytical testing in accordance with the test methods specified in California Code of Regulations, title 22, section 66279.90(b), including updated and approved versions of the test methods specified in California Code of Regulations, title 22, section 66279.90(b) approved by EPA, or by complying with conditions***

Watson Gin, Deputy Director  
October 23, 2007  
Page 7

***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."***

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

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

Therefore, this condition must be revised to eliminate any implication that used oil received from multiple generators is limited to a consolidated load using a consolidated manifest.

AEI requests that this condition be revised to state:

***"Option 3. For used oil received from multiple generators and when the transporter provides fingerprint test data for each generator using EPA Test Method 9077."***

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

This condition states: "The Permittee shall obtain the fingerprint test data referenced in N.2.c.(3) above from the transporter; and

(i) For any generator whose used oil has a concentration that exceeds 1000 ppm total halogens, the Permittee shall receive and have on file proper documentation and follow the procedures in option 1 above."

Watson Gin, Deputy Director  
October 23, 2007  
Page 8

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

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

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

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

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

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

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

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

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

This condition states: "Option 5. For used oil received from multiple generators (Consolidated Loads) and when the transporter cannot provide fingerprint data or retained samples as discussed in Options 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) accompanied by a determination that the rebuttable presumption is rebutted pursuant to California Code of Regulations, title 22, section 66279.10(b), (b)(1) and (2)."

First, for the same reasons described above for Part V., Condition N.2.c.(3) and Part V., Condition N.2.c.(4) regarding the three scenarios under which AEI may receive used oil

Watson Gin, Deputy Director  
October 23, 2007  
Page 9

from multiple generators, this condition needs to be revised so that used oil received from multiple generators is not restricted to consolidated load using a consolidate manifest.

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

***"Option 5. For used oil received from multiple generators, and when the transporter cannot provide fingerprint data or retained samples as discussed in Options 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)."***

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

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

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

Watson Gin, Deputy Director  
October 23, 2007  
Page 10

competitive disadvantage with transporters who otherwise can take their oil directly to D/K or other receiving facilities.

We note that our firm has submitted comments on behalf of D/K in their appeal of the American Oil permit that has raised numerous environmental and regulatory issues regarding a similar PCB testing procedure. We hereby incorporate those comments and the policy arguments and legal objections raised therein by reference and attach those letters hereto. The 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. Or it may make sense to require trucks bound for out-of-state facilities to be tested on a truck by truck basis for similar reasons. It makes no sense to do so for AEI, which sends all of its oil to D/K.

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

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

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

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

**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:

Watson Gin, Deputy Director  
October 23, 2007  
Page 11

- (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) 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 does not contain PCBs at a concentration of 2 ppm or greater."

As noted above, AEI sends its used oil to D/K. The conditions in Part V., 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 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.

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 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:

*"If the Permittee elects to send used oil to a recycling facility that has not been issued a 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 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) 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) 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 does not contain PCBs at a concentration of 2 ppm or greater.*

*If the Permittee elects to send the used oil to a recycling facility issued a treatment 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."*

Watson Gin, Deputy Director

October 23, 2007

Page 12

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

This condition states, "Write the manifest number on the written test results for the used oil that was tested."

As noted above, AEI sends its used oil to D/K. The conditions in Part V., Condition O.2.b.(4) is inconsistent with D/K's WAP. It is inappropriate for DTSC to require AEI to provide instructions to a permitted hazardous 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.

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

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

This condition states: "Provide the Permittee with written test results within 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."

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

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

This condition states: "Reject the load if the test results show that the used oil contains PCBs at a concentration of 2 ppm or greater."

This standard adopts a standard of general application that is unnecessary and there is no regulatory 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.

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

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

This standard adopts a standard of general application that is unnecessary and there is no regulatory requirement to support it. This standard is inconsistent with both California

Watson Gin, Deputy Director  
October 23, 2007  
Page 13

and federal regulatory schemes for used oil. Therefore, this condition must be removed entirely from the permit.

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

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

AEI requests that this condition be revised to state:

***“The Permittee shall completely empty the wastes from the tank to remove all visible waste residues before the usage is changed.”***

\*\*\*\*\*

AEI believes that this petition for review raises important compliance issues related to the permit for the facility that DTSC must, in its discretion, review. AEI respectfully requests that DTSC make the changes requested and reissue the permit or grant this petition for review on all of the issues raised that are not accommodated and set a briefing schedule for the appeal pursuant to 22 CCR 66271.18(c). If you would like to discuss this petition for review, you may feel free to contact me at (916) 552-2881 at your convenience.

*PaulHastings*

Watson Gin, Deputy Director  
October 23, 2007  
Page 14

Sincerely,

//original signed by//

Robert P. Hoffman  
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

RPH:eav

Attachments

cc: Raymond LeClerc, DTSC  
Rosemary Domino, Advanced Environmental, Inc.

LEGAL\_US\_W # 57355945.3 26635.00019