



Linda S. Adams
Secretary for
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Department of Toxic Substances Control

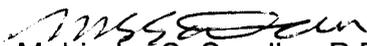
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MEMORANDUM

TO: Watson Gin
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FROM: 
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Standardized Permitting and Corrective Action Branch
Hazardous Waste Management Program

DATE: August 6, 2007

SUBJECT: **APPEAL OF PERMIT DECISION IN THE MATTER OF AMERICAN OIL COMPANY, DTSC'S ARGUMENTS IN RESPONSE TO APPEAL OF PERMIT CONDITIONS**

This Briefing Memorandum sets forth the Department of Toxic Substances Control's (DTSC) arguments in response to the appeal on the permit conditions that have been granted review pursuant to California Code of Regulations, title 22, section 66271.18(a) in the appeal of American Oil Company (AOC) Hazardous Waste Facility Permit (Permit).

A. Permit Appeal Filed on Behalf of of Demenno/Kerdoon (D/K) Regarding the PCB Testing Requirements in the Permit

D/K's Argument:

D/K argues that if these PCB testing requirements are applied statewide, rural oil transporters would be negatively impacted by the testing which would lead to rural transporters traveling farther distances to unload used oil and therefore impacting larger recycling facilities located in urban areas. D/K argues that the current requirement at in-state recycling facilities for testing each tank receiving used oil for PCB's are effective and sufficient to identify PCB-containing oil and to ensure that PCB-contaminated oil is properly disposed of as hazardous waste. D/K further argues that the PCB testing requirements represent a fundamental change in DTSC regulatory policy and if applied statewide as a standard of general application, they should be subject to the rulemaking requirements of the Administrative Procedure Act (APA).

DTSC's Argument:

While D/K argues that DTSC failed to consider the larger picture in analyzing the ramifications of the PCB testing requirements contained in the American Oil permit, D/K has failed to include any support or evidence to substantiate its argument. Without any support or evidence that the PCB testing requirements in this permit would negatively impact the industry, D/K's argument remains a mere assumption.

Since DTSC has no control over whether a used oil transporter, after filling up its tanker trailer with used oil, ships the used oil in-state or out of state, the PCB testing requirements in this Permit are necessary to ensure that all used oil in the outgoing tanker trailer does not contain PCBs at a concentration of 2 ppm or greater. The permit conditions are practical because testing of each tanker truck is only required after the test result in the outgoing tanker trailer confirms that the used oil contains PCBs at a concentration of 2 ppm or greater. The facilities operated by Industrial Services and Evergreen are already testing used oil in each in-coming truck before it is unloaded into the tanks.

D/K has not provided any support or evidence that these PCB testing requirements would increase the truck traffic and idling emissions. Based on the information available to DTSC, DTSC believes that the transportation pattern of used oil from rural areas to any in-state receiving facilities will not change because of the PCB testing requirements; neither will they increase the traffic or miles traveled. On the other hand, DTSC believes that with proper pre-acceptance arrangement and scheduling with the receiving facilities, the idling emission or wait time can be significantly reduced.

D/K also argues that if the PCB testing requirements are intended to be applied statewide, it should be subject to the rulemaking requirements of the Administrative Procedures Act (APA).

DTSC disagrees. DTSC has the statutory authority and mandate to impose permit conditions on a case-by-case basis to ensure that American Oil Company is receiving the types of hazardous waste that it is authorized to receive, regardless of the final destination of the used oil, and to ensure that American Oil Company's used oil transfer operation provides adequate protection of the environment and public health.

B. Permit Appeal Filed on Behalf of the Center for Environmental Health (CEH) Regarding the Chemical Resistant Coating to Secondary Containment Area

CEH made this comment on the Draft Permit during the public comment period. DTSC agreed with CEH's comment at that time and added the permit condition "S" to state,

"The Permittee shall, within 60 days of the effective date of the Permit, apply a coating material to the containment area, which is compatible with the hazardous

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wastes to be managed in the containment area and is sufficiently impervious to contain leaks and spills.”

This permit condition was intended to require American Oil Company to apply the chemical resistant coating to both the walls and the floor of the secondary containment area. Unfortunately, DTSC made a mistake by stating in its Response to Comments that “a permit condition [is added] to require application of a chemical resistant coating to the floor of the secondary containment system” and leaving out the word “walls”.

DTSC will revise this permit condition to clarify that the chemical resistant coating must be applied to the berms, including the floor and the walls up to four inches high in both Unit #1 (Loading and Unloading Area) and Unit #2 (Used Oil Storage Area) above ground surface. The wall height is determined by the lowest berm height in these two units.

“The Permittee shall, within 60 days of the effective date of the Permit, apply a coating material to the containment area, which is compatible with the hazardous wastes to be managed in the containment area and is sufficiently impervious to contain leaks and spills. The coating must be applied to the berms, including the floor and the walls up to four inches high in both Unit #1 (Loading and Unloading Area) and Unit #2 (Used Oil Storage Area) above ground surface.”

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