

1 STATE OF CALIFORNIA  
2 ENVIRONMENTAL PROTECTION AGENCY  
3 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

4 In the Matter of: ) Docket Number: HWCA 07/08-P003  
5 )  
6 Advanced Environmental, Inc. ) FINAL APPEAL DECISION AND  
7 13579 Whittram Avenue ) ORDER  
8 Fontana, California 92335 )  
9 ) California Code of Regulations,  
10 ) Title 22, section 66271.18  
11 )  
12 EPA ID No. CAT 080 025 711 ) Effective Date: May 11, 2009

11 **I. INTRODUCTION**

12 On September 24, 2007, the Department of Toxic Substances Control (DTSC)  
13 issued a Standardized Hazardous Waste Facility Permit (Permit) decision to  
14 Advanced Environmental, Inc. (AEI), a storage and treatment facility located at 13579  
15 Whittram Avenue, Fontana, California 92335. On October 23, 2007, AEI (Petitioner)  
16 filed a petition for review (Appeal) of the DTSC's final permit decision.

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

22 **II. PROCEDURAL BACKGROUND**

23 On February 13, 2008, DTSC issued Order Number HWCA 07/08-P003, which  
24 granted review of 17 permit conditions related to Used Oil - Total Halogens and  
25 Polychlorinated Biphenyls (PCBs) testing requirements. DTSC granted review of the  
26 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*).

1 DTSC issued a public notice on February 27, 2008, that announced its decision  
2 to grant review of these permit conditions, and subsequently, due to errors in the first  
3 public notice, reissued a second public notice on May 8, 2008, for a briefing period  
4 that closed on June 24, 2008. Both public notices established a briefing schedule and  
5 stated that any interested party may file a written argument.

6 During the first public briefing period, from February 27, 2008, through  
7 April 11, 2008, Ms. Elizabeth Lopez, a resident in the vicinity of the Facility, submitted  
8 a briefing via email on March 4, 2008, requesting an informal appeals conference.  
9 During the second briefing period, from May 8, 2008, through June 24, 2008,  
10 Mr. Kenneth Van Horn submitted a briefing dated June 2, 2008, related to land use  
11 and a potential disproportionate increase of cancer in the vicinity of the Facility.  
12 In addition, Petitioner resubmitted its comments in their entirety on June 17, 2008.  
13 On June 23, 2008, DTSC's permit renewal team submitted its brief responding to the  
14 Appeal.

15 During the pendency of the Appeal, the permit decision has been stayed  
16 pursuant to California Code of Regulations, title 22, sections 66271.14(b)(2) and  
17 66271.15. During the pendency of this Appeal, AEI may continue to operate the  
18 Facility under the terms and conditions of the Interim Status Document (ISD) issued  
19 by DTSC in 1991.

### 20 **III. JURISDICTION**

21 DTSC has jurisdiction over hazardous waste facility permits and the imposition  
22 of conditions on such permits pursuant to the California Health and Safety Code,  
23 section 25200, and the appeal of permits pursuant to California Health and Safety  
24 Code, section 25186.1(b)(1) and California Code of Regulations, title 22, section  
25 66271.18. Used oil is a hazardous waste in California pursuant to California Health  
26 and Safety Code, section 25250.4. Authorization to transfer used oil is required.  
27  
28

1 **IV. FACILITY BACKGROUND**

2 **A. FACILITY DESCRIPTION**

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

7 **B. PERMITTED HAZARDOUS WASTESTREAMS AND MANAGEMENT UNITS/ACTIVITIES:**

8 Current operations consist of storage of liquid wastes in 15 waste storage  
9 tanks, with a total maximum permitted capacity of 423,240 gallons. Hazardous wastes  
10 managed at AEI are primarily used oil, oily wastes and wastewater, oily solids and  
11 used anti-freeze. The acceptance criteria require that wastes are analyzed for  
12 physical and chemical properties onsite, or at an offsite State certified laboratory.  
13 Incoming liquid waste in 2,000 gallon tanker trucks is pumped into storage tanks  
14 through a pump and piping system. Each pump uses a suction strainer to filter and  
15 remove any solid debris. Incoming oily solids are either transferred into roll-off bins or  
16 55-gallon drums. Tank contents are unloaded into larger 6,000 gallon tanker trucks  
17 for shipment to offsite recycling or disposal facilities.

18 The Standardized Permit issued on September 24, 2007, allows AEI to  
19 continue to operate, to increase the number of permitted units from 15 to 19, to  
20 increase the total capacity by 49,320 gallons, to close specified tank areas, and to  
21 relocate specified tanks to a new tank area. The new waste tank farm will consist of  
22 19 hazardous waste storage tanks with maximum permitted capacity of 472,560  
23 gallons. Of the 19 tanks, 14 will be new and five (5) existing tanks will be relocated to  
24 the new waste tank farm.

25 **C. FACILITY HISTORY:**

26 Historically, AEI began operating under ownership of Lakewood Oil Company  
27 (Lakewood) in the late 1960's and early 1970's as a collection and treatment center for  
28 used motor oil. The Facility used heat to separate oil and water, producing a fuel oil.

1 In 1982, DTSC (then the Department of Health Services) allowed Lakewood to refine  
2 and store waste oil and treat and dispose wastewater generated at the Facility. In  
3 September 1989, Lakewood was sold to Petroleum Recycling Corporation (PRC). In  
4 1991, DTSC issued an Interim Status Document (ISD) to PRC, allowing for treatment  
5 of hazardous wastes using filtration, distillation and separation. In 1995, AEI acquired  
6 PRC. In 1999, AEI applied to the DTSC for a Standardized Permit.

## 7 **V. DISCUSSION**

8 This decision addresses only the Appeal Comments that were granted review  
9 by DTSC. Issues raised by Ms. Elizabeth Lopez and Mr. Kenneth Van Horn relating to  
10 land use are not germane and are outside the scope of the review of the Appeal  
11 Comments and are therefore not addressed. Each Appeal Comment is addressed in  
12 turn. Ms. Elizabeth Lopez's request for an informal appeals conference was evaluated  
13 by DTSC and DTSC concluded that an informal appeals conference was not  
14 warranted. Recommended language has been provided for each Appeal Comment  
15 that has been granted resulting in their respective permit conditions being modified.  
16 The Permit is remanded to the Permit Renewal Team (Team) for the necessary  
17 revisions.

### 18 **Appeal Comment 4: Part V., Condition N.2.c.(1)(A)**

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

1 66279.90(b) is not often revised to list the approved updated versions of  
2 the test methods listed in that section. For example, EPA has recently  
3 adopted test method 8021B to test used oil for halogens. EPA test  
4 method 8021B is an updated and approved version of EPA test method  
5 8021A. While 22 CCR 66279.90(b) does not specifically list EPA test  
6 method 8021B, its use should be allowed by DTSC due to the fact that it  
7 is simply an updated and approved version of EPA test method 8021A.  
8 Therefore, AEI requests that this condition be revised to state:

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

### 19 **Permit Renewal Team Briefing Argument**

20 The Team requests that Comment 4 be denied because the Petitioner's  
21 proposed change to the condition would violate regulatory requirements.  
22 California Code of Regulations, title 22, section 66279.90(b) does not list  
23 updated versions of the specified tests or list Method 8021B as an  
24 acceptable test method. Section 66279.90(b) allows only the four (4)  
25 test methods listed in that section to be used to rebut the rebuttable  
26 presumption. If and when California Code of Regulations, title 22,  
27 section 66279.90(b) is amended to include an expanded list of  
28 acceptable tests, Condition N.2.c.(1)(A) as currently drafted will allow the  
Permittee to use those new tests.

### 29 **Response:**

30 DTSC grants this permit condition for the following reasons: 1) the U.S.  
31 Environmental Protection Agency approved and replaced method 8021A with 8021B  
32 in the SW-846 Revision 2, Dec. 1996; 2) Method 8021B replaced method 8021A  
33 approximately 12 years ago and method 8021B detects ten additional constituents,  
34 and the natural default by most labs has defaulted to the use of method 8021B; and

1 3) in accordance with Health and Safety Code, section 25150(c), "...the department  
2 may limit the application of the standards and regulations adopted or revised pursuant  
3 to subdivision (a) at facilities operating pursuant to a hazardous waste facilities permit  
4 or other grant of authorization issued by the department in any manner that the  
5 department determines to be appropriate...", provided the standard does not "result in  
6 the imposition of any requirement for the management of a RCRA waste that is less  
7 stringent than a corresponding requirement adopted by the Environmental Protection  
8 Agency pursuant to the federal act." The Permit condition shall be revised to allow the  
9 Permittee to use updated and U.S. EPA approved methods of test methods specified  
10 in section 66279.90(b). Revised permit language is provided below:

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

23 **Appeal Comment 5: Part V., Condition N.2.c.(1)(B)**

24 **This condition states: [t]he Permittee shall obtain from the**  
25 **transporter a copy of the Generator's Waste Profile Worksheet**  
26 **(GWPW), attached to the manifest.**

27 AEI will not rebut the presumption regarding high halides unless the  
28 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.

1 In addition, the GWPW and the analytical used to rebut the presumption  
2 are not attached to the manifest. Those documents may accompany the  
3 load or precede the receipt of the load. Thus the reference to "attached  
4 to the manifest" must be removed. These documents may also be  
5 provided by the generator. Thus, a reference to the generator must be  
6 included. AEI requests that this condition be revised to state:

7 "The Permittee shall obtain from the generator or transporter a copy of  
8 the GWPW and the analytical results for the halogen content used to  
9 rebut the presumption."

### 10 **Permit Renewal Team Briefing Argument**

11 The Team recommends that the first component of the comment (option  
12 to obtain documentation from the generator instead of the transporter)  
13 be denied for reasons discussed below. The Team recommends that  
14 the second and third components (obtain analyticals along with the  
15 GWPW and delete the phrase "attached to the manifest") be granted.  
16 Finally, the Team requests that the Petitioner's suggested revisions to  
17 the condition be rejected and the Team's suggested revisions provided  
18 below be adopted.

19 The Team does not agree with Petitioner's claim that the option to obtain  
20 the information from the generator should be added to the condition,  
21 because this approach will undermine the dependability of the system.  
22 Based on Petitioner's comments on the draft permit, the final Permit now  
23 provides flexibility to the Permittee by not requiring the Permittee to test  
24 each load that exceeds halogen criteria. As requested by the Permittee  
25 in comments on the draft permit, the final Permit allows the Permittee to  
26 rely on testing conducted by others 'provided specific requirements are  
27 met' (See, Response to Comment 4-4). If the transporter brings  
28 documentation from the generator that accompanies the manifest with  
the load, then there will be a guarantee that the Permittee will be  
informed prior to accepting the waste, whether each individual load did  
or did not have greater than or equal to 1000 ppm halogens. If the  
Permittee is allowed to rely solely on documentation from the generator  
that may arrive prior to the load, there is no guarantee that the  
Permittee's technician that processes the load will be able to retrieve the  
information from a particular generator and review it carefully in order to  
verify the halogen content of each specific load prior to accepting the  
load. The condition's current requirement to obtain the documentation  
from the transporter will provide that necessary certainty, protect the  
integrity of the process and ensure that critical information is available  
and reviewed before a load is accepted. For these reasons, the Team  
believes it is important for the condition to clarify that the GWPW and the  
analyticals must accompany the manifest for the waste.

1 The Team agrees with the Petitioner's requests to add "analyticals" to  
2 the condition and to delete the phrase "attached to the manifest". The  
3 Team recommends the following revised condition N.2.c.(1) (B).

4 "The Permittee shall obtain from the transporter a copy of the GWPW  
5 and the analytical results for the halogen content used to rebut the  
6 presumption. This information shall accompany the manifest."

7 **Response:**

8 DTSC grants this permit condition for the following reasons: 1) existing law  
9 provides authority for the Permittee to arrange with the generator of the used oil to  
10 supply information required by California Code of Regulation, title 22, section  
11 66264.13. (a); 2) the requirement that the waste, manifest, GWPW and the analytical  
12 results must arrive at the same time that the Facility safeguards against human error;  
13 3) the permit condition as written raises concern over whether the responsibility being  
14 placed on the transporter to have in its possession the GWPW or 4) the Permittee  
15 may enter into an agreement with the generator of the waste oil to use item 14 of the  
16 manifest to ensure that the manifest, GWPW, and the analytical results and/or  
17 supporting documents used to rebut the rebuttable presumption are simultaneously  
18 reviewed, inspected and cross referenced to determine whether it matches the identity  
19 of the wastes specified.

20 To address the concerns stated above, DTSC orders that the permit condition  
21 be revised to include language as is provided below:

22 (B) The Permittee shall obtain from the transporter a copy of may,  
23 pursuant to California Code of Regulations, title 22 section  
24 66264.13, arrange with the generator to provide the Generator's  
25 Waste Profile Worksheet (GWPW) attached to the manifest and  
26 the analytical results for the halogen content used to rebut the  
27 presumption. This information and the accompanying manifest  
28 shall be cross referenced to provide the necessary referencing  
and descriptive information to ensure that the appropriate  
analytical results are easily identified should the results become  
separated from the manifest and/or GWPW.

1 **Appeal Comment 6: Part V., Condition N.2.c.(1)(C)**

2  
3 **This condition states: The Permittee shall review this**  
4 **documentation and confirm in the operating log that the GWPW:**  
5 **i) is less than 365 days old, ii) is based on a representative sample**  
6 **of the waste, and iii) was analyzed by a laboratory certified in**  
7 **accordance with the Environmental Laboratory Accreditation**  
8 **Program by using the test methods specified in California Code of**  
9 **Regulations, title 22, section 66279.90(b).**

10 First, AEI objects to the term "confirm in the operating log". The GWPW,  
11 which accompanies the manifest, contains the date that it was last  
12 annually renewed. The person receiving the shipment of waste for AEI  
13 can, therefore, verify that the GWPW is less than 365 days old without  
14 further reference to a log or elsewhere in the operating record. Further,  
15 in the future, AEI's electronic waste tracking system will electronically  
16 alert the proper personnel before the profile is due to be renewed each  
17 year.

18 Second, AEI objects to the requirement that AEI confirm that the GWPW  
19 was based on a representative sample of the waste. AEI has no means  
20 of confirming that the generator's waste analysis was based on a  
21 representative sample of the waste, and should not be required to do so.  
22 AEI cannot force the generators to properly comply with the waste  
23 identification requirements of 22 CCR, section 66262.11. Only DTSC  
24 and the Certified Unified Program Agency can enforce the regulatory  
25 requirements for generators. AEI must rely on the generator's legal  
26 obligation to properly comply with waste identification requirements. The  
27 waste identification requirements of 22 CCR, section 66262.11(b)(1)  
28 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.

1 AEI requests that this condition be revised to state:

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

### 7 **Permit Renewal Team Briefing Argument**

8 The Team requests that the first component of the appeal comment  
9 (delete the requirement to "confirm in the operation log") be denied  
10 because it is based on a misunderstanding about the word "confirm".  
11 The Team did not intend "confirm" to mean that the Facility personnel  
12 have to retrieve and review documentation from the operation [sic] log  
13 prior to accepting the waste. Instead, the term "confirm in the operating  
14 log" means to "enter or document" in the operating log after the waste is  
accepted. The Team agrees with Petitioner that the term "record" may  
be used instead of "log" because the terms are used interchangeably.  
The Team recommends that its revisions to the condition suggested  
below be adopted to clarify these issues.

15 The Team requests that the second component of the comment (request  
16 to delete the requirement to confirm the generator's waste analysis was  
17 based on a representative sample of the waste) be denied because  
18 Petitioner's assertion that it is not possible to comply with the  
19 requirement is not accurate and deleting the requirement would be  
20 inconsistent with the Facility's Waste Analysis Plan (WAP). Section III.B  
21 of the Standardized Permit Application for the Facility states "The  
22 preapproval process centers around the Generator's Waste Profile  
Worksheet, GWPW, and a representative sample of the waste. The  
23 representative sample may be provided by the generator, with  
certification that it is representative of the actual waste stream and was  
24 taken and preserved in accordance with 40 CFR 261, Appendix 1."  
(emphasis added.) This indicates the condition as currently drafted can  
be implemented and is consistent with the Facility's WAP.

25 The third component of the comment (assertion that the requirement for  
26 analyticals to be prepared by a lab certified in accordance with the  
27 Environmental Laboratory Accreditation Program is overbroad) should  
28 be denied because this comment misinterprets the requirement, which  
was intended to apply only to analyticals used to rebut the presumption.  
Nonetheless, to address Petitioner's concern, the Team requests that  
the condition be revised to clarify that the certification requirement only  
applies when analyticals will be used to rebut the presumption.

1 For the above reasons, the Team requests that the Petitioner's  
2 suggested revisions to the condition be rejected and the Team  
3 recommends that the following revisions and clarifications for Condition  
N.2.c.(1)(C) be adopted:

4 "The Permittee shall review this documentation prior to accepting the  
5 waste and subsequently shall enter into the operating record evidence  
6 that the Permittee reviewed the documentation and verified that: i) the  
7 GWPW is less than 365 days old, ii) the GWPW is based on a  
8 representative sample of the waste and iii) analytical test data used to  
9 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)."

10  
11 **Response:**

12 DTSC grants this permit condition for the following reasons: 1) although the  
13 permit condition is consistent with existing law, it is written with ambiguity that creates  
14 confusion; and 2) terms used in the permit condition are used loosely or  
15 interchangeably with other sections, namely section M, of the Permit.

16 To address the concerns stated above, DTSC orders that the permit condition  
17 and other permit conditions impacted by these changes be revised to use consistent  
18 terminology as is used in existing statute and regulations. DTSC orders that the  
19 permit condition be revised to include language as provided below:

20 (C) ~~The Permittee shall review this documentation and confirm in the~~  
21 ~~operating log that the GWPW: i) is less than 365 days old, ii) is~~  
22 ~~based on a representative sample of the waste; and iii) was~~  
23 ~~analyzed by a laboratory certified in accordance with the~~  
24 ~~Environmental Laboratory Accreditation Program by using the test~~  
25 ~~methods specified in California Code of Regulations, title 22,~~  
26 ~~section 66279.90(b);~~

25 The Permittee shall review the information provided pursuant to  
26 22 CCR section 66264.13.(a)(2)( B) and verify and record in the  
27 operating record pursuant 22 CCR section 66264.73. that the  
28 information provided is; i) less than 365 days old; ii) is based on a  
representative sample of the waste as determined through the  
inspection required in section 66264.13 (a)(5) and; iii) analytical

1 test data used to rebut the presumption was prepared and  
2 analyzed by a laboratory certified in accordance with the  
3 Environmental Laboratory Accreditation Program by using test  
4 methods specified in California Code of Regulations, title 22,  
5 section 66279.90(b).

6 **Appeal Comment 7: Part V., Condition N.2.c.(1)(E)**

7 **This condition states: [t]he Permittee shall review the**  
8 **documentation discussed above and enter into the operating log**  
9 **the reason that the rebuttable presumption can be rebutted**  
10 **pursuant to California Code of Regulations, title 22, section**  
11 **66279.10(b), (b)(1) and (2).**

12 The requirement to enter into the "operating log" the reason that the  
13 rebuttable presumption can be rebutted is redundant and unnecessary.  
14 A generator may sign a separate Waste Oil Certification letter certifying  
15 that its oil has been rebutted per 22 CCR sections 66279.10(b) (1) and  
16 (b) (2) and that the used oil has not been mixed with any halogenated  
17 hazardous wastes. Such letters accompany the GWPW and the  
18 manifest or are submitted in advance. For used oils containing greater  
19 than 1,000 parts per million ("ppm") of halogens, AEI's review of this  
20 certification statement is an appropriate procedure to rebut the  
21 presumption. The analytical results (as well as the manifest and  
22 GWPW) are maintained in the operating record. Therefore, this  
23 condition should be revised to properly reflect the procedure used to  
24 rebut the presumption and record documentation in the operating record.  
25 AEI requests that this condition be revised to state:

26 "The Permittee shall review the documentation discussed above and  
27 place it into the operating record. This documentation must contain a  
28 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)."

29 **Permit Renewal Team Briefing Argument**

30 The Team recommends that this appeal comment and its proposed  
31 revisions to the condition be denied because the purpose of the  
32 condition is to require the Facility to provide evidence in the Facility's  
33 records of the reason(s), based on testing and data analysis, that the  
34 rebuttable presumption may be rebutted pursuant to California Code of  
35 Regulations, title 22, section 66279.10(b)(1) and (2). The Petitioner's  
36 proposed revisions would remove obligations on the Permittee to review

1 and verify analytical information, and would instead simply allow the  
2 Facility to place a generator's certification, which may be based on  
"generator knowledge" rather than testing and analysis, in the record.

3  
4 Used oil containing more than 1,000 ppm total halogens is presumed to  
be a RCRA hazardous waste because it has been mixed with a  
5 halogenated hazardous waste listed in Subpart D of Part 261, Title 40,  
California Code of Federal Regulations. Failure to rebut the presumption  
6 means that the used oil must be managed as a hazardous waste and the  
Permittee must reject the load pursuant to the Permit's Condition  
7 N.2.a.(1) and b. In its comments on the draft permit, the Permittee  
8 objected to an obligation to test every load (See Comment 4-4 in the  
Response to Comments document.). As discussed in the Response to  
9 Comments, the Permit's Special Condition N.2.c. now offers the  
Permittee the flexibility to rely on the generator's testing rather than  
10 requiring the Permittee to conduct its own testing to rebut this  
presumption (See Response to Comment 4-4).

11  
12 The Petitioner's comment ignores the purpose of condition N.2.c.(1)(E)  
and the Petitioner's proposed revisions undermine the effectiveness and  
13 enforceability of the Permit. This condition becomes applicable only  
after the Facility has confirmed that the used oil contains halogens  
14 exceeding 1000 ppm (See Condition N.2.a.). If used oil contains greater  
than 1,000 ppm total halogens, DTSC presumes that the used oil has  
15 been mixed with a listed hazardous waste, it must be managed as a  
RCRA hazardous waste and the Facility cannot accept it as used oil.  
16 Petitioner's proposal to allow the Permittee to rely on "a signed  
certification by the generator that the used oil was not mixed with any  
17 halogenated hazardous waste" does not make sense because: 1) this  
generator's certification would have been prepared before the Permittee  
18 received and tested the waste; and 2) the certification would not change  
the Permittee's test results showing halogens at levels greater than  
19 1000 ppm. The used oil would still contain halogens at levels above  
20 1000 ppm, despite the generator's certification. Therefore, the Permittee  
can only demonstrate through analytical testing, either by the Permittee  
21 or the generator that 1) the earlier test results were erroneous; or 2) the  
used oil does not contain significant concentrations of any of the  
22 individual halogenated listed hazardous wastes.

23  
24  
25 If the Petitioner's revisions were adopted, it would become much more  
likely that waste that should not be sent to Petitioner's Facility would be  
26 received and accepted. It would be very difficult if not impossible for  
DTSC to conduct meaningful audits and inspections that would allow  
27 DTSC to determine whether the Facility is complying with the Permit,  
statutes and regulations.  
28

1 In conclusion, the Team recommends that the comment and Petitioner's  
2 revised condition be denied. Nonetheless, to clarify the condition, the  
3 Team recommends the following revised Condition N.2.c.(1)(E):

4 "[t]he Permittee shall review the documentation discussed above and  
5 place it into the operating record. This documentation shall contain the  
6 GWPW and the analyticals that demonstrate that the rebuttable  
7 presumption can be rebutted pursuant to California Code of Regulations,  
8 title 22, section 66279.10(b), (b)(1) and (2)."

9 **Response:**

10 DTSC finds that this permit condition is redundant, creates unnecessary  
11 confusion and should be deleted in its entirety. DTSC orders that this permit condition  
12 be included as a subsection of permit condition Part V, N.2.c.(1)(C).

13 Permit condition Part V, N.2.c.(1)(E) parallels and is duplicative of permit  
14 condition Part V, N.2.c.(1)(C). See analysis for comment 6. If the intent of permit  
15 condition Part V, N.2.c.(1)(E) is to place added emphasis on the requirement to record  
16 specified information in the operating record pursuant to California Code of  
17 Regulations, title 22, section 66264.73, then that emphasis should be placed in  
18 condition Part V, N.2.c.(1)(C) or included as a subsection of condition (C) and refrain  
19 from creating a new permit condition that only repeats or confuses the requirements.

20 (E) ~~The Permittee shall review the documentation discussed above~~  
21 ~~and enter into the operating log the reason that the rebuttable~~  
22 ~~presumption can be rebutted pursuant to California Code of~~  
23 ~~Regulations, title 22, section 66279.10(b), (b)(1) and(2);~~

24 **Appeal Comment 8: Part V., Condition N.2.c.(1)(A) and (2)**

25 **This condition states: [t]he Permittee may rebut the rebuttable**  
26 **presumption pursuant to California Code of Regulations, title 22,**  
27 **section 66279.10(b), (b)(1) and (2) only through analytical testing in**  
28 **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**

1 of Regulations, title 22, section 66279.10(b), (b)(1) and (2) and this  
2 Permit.

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

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

### 19 **Permit Renewal Team Briefing Argument**

20 The Team recommends that Appeal Comment 8 and the Petitioner's  
21 suggested revisions be denied for the same reasons stated in the  
22 Team's Arguments concerning Appeal Comment 4, incorporated herein  
23 by reference.

### 24 **Response:**

25 DTSC grants this permit condition for the reason stated in response to appeal  
26 comment 4, above.

1 **Appeal Comment 9: Part V., Condition N.2.c.(3)**

2 **This condition states: Option 3. For used oil received from multiple**  
3 **generators (Consolidated Loads) and when the transporter**  
4 **provides fingerprint test data for each generator using EPA Test**  
5 **Method 9077.**

6 The parenthetical reference to "(Consolidated Loads)" creates an  
7 implication that the category refers to shipments arriving using a  
8 consolidated manifest. Shipments received by AEI from multiple  
9 generators are not always "consolidated loads" where only a  
10 consolidated manifest was used. AEI receives shipments from multiple  
11 generators under the following three scenarios:

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

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

16 The shipment is comprised of a combination of used oil under a one or  
17 more consolidated manifests and used oil from multiple generators, with  
18 each generators portion having its own manifest. Therefore, this  
19 condition must be revised to eliminate any implication that used oil  
20 received from multiple generators is limited to a consolidated load using  
21 a consolidated manifest. AEI requests that this condition be revised to  
22 state:

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

26 **Permit Renewal Team Briefing Argument**

27 The Team requests that this comment and the Petitioner's suggested  
28 revision to the condition be granted.

29 **Response:**

30 DTSC finds that the parenthetical reference to consolidated loads may create  
31 long term compliance and enforcement issues and grants modification of this permit  
32 condition. To address the concerns stated above, DTSC orders that the permit  
33 condition be revised to include language as provided below:

1 Option 3. For used oil received from multiple generators (~~Consolidated~~  
2 ~~Leads~~) and when the transporter provides fingerprint test data for each  
3 generator using EPA Test Method 9077.

4 **Appeal Comment 10: Part V., Condition N.2.c.(3)(B)(i)**

5 **This condition states: The Permittee shall obtain the fingerprint test**  
6 **data referenced in N.2.c.(3) above from the transporter; and (i) For**  
7 **any generator whose used oil has a concentration that exceeds**  
8 **1000 ppm total halogens, the Permittee shall receive and have on**  
9 **file proper documentation and follow the procedures in option 1**  
10 **above.**

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

14 **Permit Renewal Team Briefing Argument**

15 The Team incorporates its arguments regarding Comments 4 through 8  
16 herein by reference and recommends that this comment be denied.

17 **Response:**

18 DTSC grants modification to this permit condition because although similar to  
19 the concerns raised in comment 4, the implications from this permit condition differ.  
20 DTSC orders that the permit condition and other pertinent permit conditions be revised  
21 to reflect the changes granted through the Appeal.

22 Although Petitioner states that permit condition N.2.c(3)(B)(i) reflects the same  
23 concerns as identified in Option 1, and comments 4 through 8, and incorporates those  
24 concerns which if addressed would "cure those problems," the permit condition differs.

25 The issues with permit conditions under Option 1 and permit conditions under  
26 Option 3 specifically, N.2.c(3)(B)(i) are not the same. Permit condition N.2.c(3)(B)(i)  
27 will only apply when a transporter has used the "consolidated manifesting" procedures  
28 to consolidate wastes as defined in Health and Safety Code, section 25160.2.  
"Fingerprint" test data using EPA test method 9077, is a field semi-quantitative  
analysis. Results are reported as being above or below 1000 mg/kg of chlorine in oil

1 matrices. Transporters who consolidate wastes, into containers, use the procedure to  
2 obtain a quantitative analysis to determine if the waste oil contains halogens above or  
3 below 1000 ppm before consolidating the wastes. Because the transporter has  
4 elected to consolidate the wastes and the field testing has been carried out by the  
5 transporter, it is the responsibility of the transporter to provide this data to the  
6 Permittee. If the "fingerprint" indicates that the waste oil contains above 1000 ppm  
7 and the transporter will rely on the generator's documentation to rebut the rebuttable  
8 presumption, the transporter must obtain a copy of the documentation and provide it to  
9 the Permittee.

10 However, because the permit condition as written requires that the Permittee  
11 receive and "have on file" proper documentation and follow the procedures in  
12 Option 1, this permit condition must be revised to reflect the modifications as ordered  
13 in response to Comment 4 permit condition N.2.c.(1)(A), that allows the Permittee to  
14 make arrangements with the generator and cross reference the manifest and  
15 supporting documentation.

16 DTSC orders that the permit condition and other pertinent permit conditions be  
17 revised to reflect the changes granted through the Appeal. The permit condition shall  
18 be revised to include language as provided below:

19 (B) The Permittee shall obtain the fingerprint test data referenced in  
20 N.2.c.(3) above from the transporter; and

21 (i) For any generator whose used oil has a concentration that  
22 exceeds 1000 ppm total halogens, the Permittee shall obtain  
23 receive and have on file proper documentation and follow the  
24 procedures in Option 1; and

25 **Appeal Comment 11: Part V., Condition N.2.c.(4)**

26 **This condition states: Option 4. For used oil received from multiple**  
27 **generators (Consolidated Loads) and when the transporter cannot**  
28 **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.**

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

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

### 8 **Permit Renewal Team Briefing Argument**

9 The Team recommends that Comment 11 be granted and that the  
10 phrase "(Consolidated Loads)" be deleted from this condition.  
11

### 12 **Response:**

13 DTSC finds that the parenthetical reference to consolidated loads may create  
14 long term compliance and enforcement issues and grants modification of this permit  
15 condition. To address the concerns stated above, DTSC orders that the permit  
16 condition be revised to include language as provided below:  
17

- 18 (4) Option 4. For used oil received from multiple generators,  
19 (~~Consolidated Loads~~) and when the transporter cannot provide  
20 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.

### 21 **Appeal Comment 12: Part V., Condition N.2.c.(4)(A)(ii)**

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

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

1 **Permit Renewal Team Briefing argument**

2 The Team incorporates its arguments regarding Option 1 in Comments 4  
3 through 8 herein by reference and recommends that this comment be  
4 denied.

5 **Response:**

6 DTSC grants revision of this permit condition. Permit conditions N.2.c.(4)(A)(ii)  
7 as written require that the Permittee "receive and have on file" proper documentation  
8 and follow the procedures in Option 1. The condition to receive and have on file is  
9 unnecessarily duplicative and burdensome without providing additional safeguard  
10 against human error. This permit condition should be revised to reflect the  
11 modifications as suggested in Comment 4, which allow the Permittee to make  
12 arrangements with the generator and cross reference the manifest and supporting  
13 documentation. DTSC orders that the permit condition be revised to include language  
14 as provided below:

15 (ii) For any generator whose used oil has a concentration  
16 that exceeds 1000 ppm total halogens, the Permittee shall  
17 obtain receive and have proper documentation on file prior  
to acceptance and follow the procedure in Option 1-above.

18 **Appeal Comment 13: Part V., Condition N.2.c.(5)**

19 **This condition states: Option 5. For used oil received from multiple**  
20 **generators (Consolidated Loads) and when the transporter cannot**  
21 **provide fingerprint data or retained samples as discussed in**  
22 **Options 3 and 4 above, the Permittee may rebut the presumption**  
23 **only through analytical testing in accordance with the test methods**  
24 **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).**

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

1 Second, AEI objects to the permit condition's requirement that analytical  
2 data be "accompanied by a determination that the rebuttable  
3 presumption is rebutted pursuant to California Code of Regulations, title  
4 22, section 66279.10(b), (b)(1) and (2)." 22 CCR section 66279.10(b)  
5 states that persons may rebut the presumption by "demonstrating  
6 through analytical testing or other means of demonstration that the used  
7 oil does not contain such hazardous waste." According to this section,  
8 and AEI's own procedures, the analytical test results themselves are the  
9 determination that the presumption can be rebutted. These analytical  
10 results are also placed in the Facility operating record. Therefore, there  
11 is no need to create an extra "determination" document that is not called  
12 for by the regulations. Accordingly, this requirement should be deleted.  
13 AEI requests that this condition be revised to state:  
14

15 "Option 5. For used oil received from multiple generators, and when the  
16 transporter cannot provide fingerprint data or retained samples as  
17 discussed in Options 3 and 4 above, the Permittee may rebut the  
18 presumption only through analytical testing in accordance with the test  
19 methods specified in California Code of Regulations, title 22, section  
20 66279.90(b) and pursuant to the procedures and criteria described in  
21 California Code of Regulations, title 22, section 66279.10(b), (b)(1) and  
22 (2)."

#### 15 **Permit Renewal Team Briefing Argument**

16 The Team recommends that (a) the substance of this appeal comment  
17 be granted, (b) but that Petitioner's suggested revisions to the condition  
18 be rejected and (c) the Team's suggested revisions to the condition  
19 below be adopted. The Team agrees that the term "(Consolidated  
20 loads)" should be deleted for clarity, but the Petitioner has misinterpreted  
21 the term "determination". The condition is not intended to require the  
22 Permittee to make an extra determination separate from the analytical  
23 testing. To clarify the condition, the Team recommends that the term  
24 "accompanied by a determination" be deleted and replaced with "that  
25 demonstrates". The Team recommends adoption of the following  
26 revised Condition N.2.c.(5):  
27

28 "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) that demonstrates that the rebuttable presumption is  
rebutted pursuant to California Code of Regulations, title 22,  
section 66279.10(b), (b)(1) and (2)."

1 **Response:**

2 DTSC finds that the parenthetical reference to consolidated loads may create  
3 long term compliance and enforcement issues and grants modification of this permit  
4 condition. In addition for the reasons cited below, DTSC orders that the permit  
5 condition be modified to reflect the appropriate method and regulatory sections for  
6 rebutting a rebuttable presumption.

7 Pursuant to California Code of Regulations, title 22, section 66279.10(b),  
8 persons may rebut the presumption by “demonstrating through analytical testing or  
9 other means of demonstration that the used oil does not contain such hazardous  
10 waste.” Because the permit condition states “accompanied by a determination,” it  
11 implies that a determination in addition to the analytical testing must be provided.

12 In addition to the concerns raised by the Petitioner, DTSC is concerned there  
13 may be an oversight in limiting the sections that are cited for rebutting a rebuttable  
14 presumption. A Permittee may rebut the presumption that used oil containing more  
15 than 1000 ppm total halogens is a hazardous waste through California Code of  
16 Regulations, title 22, section 66279.10(b)(1) through (5) and not just  
17 section 66279.10 (b)(1) and (b)(2). The permit condition as written is inadvertently  
18 more restrictive. DTSC orders that the language of permit condition N.2.c (5) be  
19 revised to include language as provided below:

- 20 (5) Option 5. For used oil received from multiple generators  
21 (~~Consolidated Loads~~), and when the transporter cannot provide  
22 fingerprint data or retained samples as discussed in Options 3 and  
23 4 above, the Permittee may rebut the presumption through  
24 analytical testing in accordance with the test methods specified in  
25 California Code of Regulations, title 22, section 66279.90(b) and  
26 pursuant to the procedures and criteria described in California  
27 Code of Regulations, title 22, section 66279.10(b), ~~(b),b(1) and (2).~~  
28

1 Appeal Comment 14: Part V., Condition O.2.

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

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

24 This places AEI at a competitive disadvantage with transporters who  
25 otherwise can take their oil directly to D/K or other receiving facilities.  
26 We note that our firm has submitted comments on behalf of D/K in their  
27 appeal of the American Oil permit that has raised numerous  
28 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.

1 **Permit Renewal Team Briefing Argument**

2 The Team recommends that this comment be denied for several  
3 reasons. First, this condition provides the Permittee with [the] flexibility it  
4 requested to have the waste tested at the receiving facility rather than at  
5 the Permittee's Facility, but with enough safeguards to ensure the  
6 integrity of the process (See, Response to Comment 4-3.). The Permit  
7 condition is intended to ensure that a receiving facility accepts legally  
8 authorized used oil. The condition ensures that Petitioner's Facility and  
9 receiving facilities accept used oil and not another type of hazardous  
10 waste contaminated with PCBs. Although the testing procedures this  
11 condition requires for receiving facilities to implement may differ from  
12 their current waste acceptance practices, requirements of this condition  
13 are not intended to contradict or conflict, with any receiving facility's  
14 WAP. The condition is intended to provide procedures that any  
15 receiving facility could follow in addition to the procedures outlined in its  
16 WAP.

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Petitioner's claim that the condition's testing procedures for the receiving facility conflict with D/K's WAP are not substantiated and are inaccurate. The Team reviewed the D/K facility's WAP and concluded that Condition O.2.'s testing procedures for PCBs in used oil are consistent with D/K's WAP. There is a difference in management practices for used oil prior to testing, but nothing in the D/K permit, WAP or application precludes D/K from sampling and testing each truckload of used oil in accordance with Condition O.2. D/K is allowed to consolidate waste prior to testing, but none of the documents referenced above preclude D/K from also testing Petitioner's loads prior to consolidation.

Petitioner's comment also fails to recognize that the receiving facility is providing a contractual service to the Permittee. If the receiving facility does not wish to abide by the instructions contained in Condition O.2.b., the Permittee has the option to send the waste to another receiving facility that will follow the Permittee's instructions. Used oil recycling facilities in California operated by Industrial Services and Evergreen test used oil in each in-coming truck before it is unloaded into the tanks and neither facility has cited backlogs or other negative impacts.

Petitioner's claim that the Permit places Petitioner at an unfair disadvantage vis-a-vis transporters is not germane, because the Petitioner is regulated as a permitted treatment, storage and disposal facility. Petitioner is subject to additional requirements to ensure the used oil it receives and manages is in fact used oil.

With regard to the regulatory, policy and legal arguments that Petitioner

1 incorporated from the American Oil appeal, the Team responds as  
2 follows:

3 Imposing testing requirements for PCBs on used oil transfer facilities on  
4 a permit by permit basis is not an underground regulation because it  
5 implements existing statutory and regulatory authority. The requirement  
6 to include PCB testing as a permit condition is intended to ensure that a  
7 receiving facility accepts legally authorized used oil. DTSC may impose  
8 any conditions on a hazardous waste facilities permit that are consistent  
9 with the intent of Chapter 6.5, Division 20, Health and Safety Code.  
10 (Health & Saf Code § 25200(a).) Permits are required to contain  
11 conditions necessary to meet the operating requirements for permitted  
12 facilities. (Cal. Code Regs., tit. 22, § 66270.32(b)(1)). Permits shall also  
13 contain terms and conditions DTSC determines necessary to protect  
14 human health and the environment (Cal. Code Regs., tit. 22,  
15 § 66270.32 (b)(2). For these reasons, the condition does not violate the  
16 Administrative Procedures Act (APA) (Gov. Code §§ 11340at. seq.).  
17 DTSC considered and rejected D/IK's environmental arguments in the  
18 Final Decision on Appeal from Facility Permit Decision in the Matter of  
19 American Oil (Docket HWCA06I07-P0001) issued on October 19, 2007  
20 (the American Oil Final Decision). In that decision, DTSC concluded  
21 1) the Idling emissions or wait time will be significantly reduced; 2) the  
22 number of shipments of used oil rejected at treatment facilities will be  
23 reduced because suspect shipments will be tested prior to transport; and  
24 3) the inadvertent mixture of used oil with used oil containing PCBs will  
25 be reduced. (See, Section 2 of DTSC's response to Appeal Comment 1  
26 of the American Oil Final Decision, incorporated herein by reference.)

18 All required environmental analysis has been conducted and the  
19 appropriate California Environmental Quality Act (CEQA) (Pub. Res.  
20 Code § 21 000 at seq.) processes have been followed. DTSC has  
21 issued a Negative Declaration in accordance with CEQA and the State  
22 CEQA guidelines. Based on the Negative Declaration, DTSC has found  
23 that the project will not have any significant adverse effects on the  
24 environment. (See. Negative Declaration, Response 10Comments, and  
25 Part III. C. of the Permit in the Administrative Record). Further, CEQA  
26 provides a separate process for appealing CEQA issues. It is not  
27 appropriate for Petitioner to raise any CEQA issues in this permit appeal  
28 process.

1 **Response:**

2 DTSC denies the appeal of this permit condition for the following reasons:

3 1) Permit condition O.2 provides AEI the adequate flexibility for testing used oils for  
4 PCBs; and 2) the arguments provided by the Petitioner are unsubstantiated.

5 The Petitioner incorporated, by reference, the comments submitted on behalf of  
6 D/K in their appeal of the American Oil permit that raised numerous environmental and  
7 regulatory issues regarding similar PCB testing procedures. In response to the  
8 aforementioned comments, DTSC incorporates its final decision by reference.

9 The Petitioner argues that since AEI sends used oil to the D/K recycling facility  
10 in Compton, a Facility permitted by DTSC, a less restrictive permit condition should be  
11 adopted: AEI's permit is not and cannot be issued contingent upon AEI sending all of  
12 its wastes to a specific recycling facility; it would be shortsighted and could potentially  
13 create long term environmental issues if ownership of either facility was transferred or  
14 altered. This Order will address only the comments raised related to AEI's specific  
15 permit conditions and as they relate to receiving facilities; the mention and use of D/K  
16 will only be used as an example.

17 PCBs, regardless of concentration, are regulated in the United States unless  
18 specifically exempted. As such, permits issued in California must be consistent with  
19 the national prohibitions and exceptions under 40 Code of Federal Regulations,  
20 section 761.20. The "[i]n-state management scheme," as cited by the Petitioner, is  
21 intended to identify shipments of used oil that exceed the permissible levels as early  
22 as feasibly possible. If the management scheme suggested by the Petitioner to "allow  
23 waste to be tested at permitted in-state facilities pursuant to the Facility WAP," was  
24 adopted, exorbitant amounts of used oil would be rendered unusable for recycling  
25 regardless of whether the shipments were coming from in-state or out of state  
26 facilities. Because PCB prohibitions and restrictions, regardless of concentrations,  
27 apply nationwide, there is no real evidence to indicate that in-state facilities would ship  
28 "more compliant" used oil.

1 Permit condition O.2., requires that "all" outgoing used oil be tested for PCBs by  
2 either the Permittee or at the designated/receiving facility prior to off loading and  
3 combining multiple loads. The Petitioner states that the Permittee should not be  
4 limited to the two options for analyzing waste oil for PCBs and cites the following:  
5 1) [i]t is impractical, unnecessary and unfair to require receiving facilities permitted by  
6 DTSC to test AEI's used oil on a truck by truck basis; 2) the requirement is  
7 inconsistent with D/K's existing permits and will result in the [receiving] facility being  
8 required to comply with two overlapping sets of PCB testing requirements; and 3) the  
9 requirement places AEI at a competitive disadvantage with transporters who otherwise  
10 can take their oil directly to D/K or other receiving facilities.

11 Permit condition O.2.(a) (1) through (9) pertains to testing done on site and  
12 allows the Permittee to obtain representative samples of used oil from the tank to be  
13 emptied. While samples of shipments have been retained, in accordance with permit  
14 condition M.5., testing for PCBs has not been performed prior to combining multiple  
15 loads into the holding/storage tanks. Once the holding/storage tanks are filled, the  
16 contents must be tested. If the results indicate PCB concentrations at or below 2 ppm,  
17 the tank contents may be transferred and shipped to an authorized facility. However,  
18 if the PCB concentrations exceed 2 ppm, a second sample must be collected and  
19 analyzed, as specified. If the second test result indicates concentrations of PCBs  
20 greater than 2 ppm, the retained samples from each of the truck loads placed into the  
21 storage tank must be tested. If all of the retained samples indicate 5 ppm or less of  
22 PCBs, the Permittee may manage the tank contents as used oil. If any of the retained  
23 samples indicate PCBs above 5 ppm, the contents of the storage tank must be  
24 managed as a hazardous waste.

25 Permit condition O.2.(b)(1) through (7) provides the Permittee the option of  
26 entering into an agreement with the designated receiving facility to test the contents of  
27 the tanker truck prior to off loading and/or mixing the contents with other shipments.  
28 The designated facility must test the tanker truck and provide results to the Permittee

1 within 24 hours. If the used oil contains at or below 2 ppm, the designated facility may  
2 accept the waste oil and manage it accordingly. If the used oil is above 2 ppm, the  
3 designated facility must reject the shipment back to the Permittee. The Permittee may  
4 elect to do its own testing and is not required to enter into an agreement with any  
5 receiving/designated facility. The two options provided under permit condition O.2.(b)  
6 are intended to facilitate business without compromising adherence to requirements  
7 that are intended to protect human health and the environment. Similarly, designated  
8 receiving facilities are not required to enter into a contractual agreement with AEI.

9 The testing of used oil for PCBs, prior to mixing with larger amounts of used oil,  
10 is necessary to ensure that the receiving facility is accepting used oil that meets the  
11 legally acceptable criteria as defined by federal and state law. Pursuant to 40 Code of  
12 Federal Regulations, section 761.20, used oil containing PCBs at or above 2 ppm is  
13 specifically regulated under both federal and State law, and its use is restricted and/or  
14 specific management standards apply.

15 Despite a ban on the use of PCBs in the United States for the last 30 years,  
16 PCBs are prevalent in used oil, rendering the used oil unrecyclable. The presence of  
17 PCBs in used oil is either through 1) the inadvertent mixing of PCB tainted oil with  
18 used oil or 2) the intentional mixing of PCBs with used oil to circumvent hazardous  
19 waste disposal requirements for PCBs.

20 Used oil transporters and authorized transfer facilities handle over 110 million  
21 gallons of used oil every year. DTSC's records dating back to 1992 indicate that over  
22 25 million gallons of used oil is improperly managed each year, creating long term  
23 environmental impacts. Mismanagement of 25 million gallons of used oil contributes  
24 to over 90 tons of heavy metals and polycyclic aromatic hydrocarbons to the  
25 environment. Of the 110 million gallons, nearly 70 million gallons of used oil is used  
26 as bunker fuels, i.e. incinerated, as a result of the intentional or inadvertent mixture of  
27 PCB laden oil with used oil, which renders used oil unsuitable for recycling if PCB  
28 concentrations exceed 2 ppm. Incineration of used oil with PCBs is an

1 environmentally poor management choice because the environmental and human  
2 health impacts of used oil combustion compared to re-refining are significant. Used oil  
3 combustion, if not properly managed, leads to large amounts of air pollution and long  
4 term environmental and health implications. Unless sampling is carried out as early  
5 as feasible to verify suspect shipments of used oil tainted with PCBs, persons violating  
6 hazardous waste laws will continue to go unprosecuted. Sampling is necessary to  
7 identify the entities responsible for mismanagement of used oil.

8 In response to the Petitioners claim that “[I]t is impractical, unnecessary and  
9 unfair to require receiving facilities permitted by DTSC to test AEI’s used oil on a truck  
10 by truck basis,” DTSC finds that the claim is unsubstantiated. First, there is no other  
11 means of determining if a shipment of used oil contains PCBs unless the shipment is  
12 tested; hence testing is the only practical means; second, the testing yields the results  
13 that ultimately dictate how a specific shipment will be managed, and thus testing is  
14 necessary; and finally because all facilities are required to operate in the same  
15 manner, it levels the playing field, thus avoiding an unfair disadvantage when  
16 complying with the requirements. Sampling costs are incidental to the cost of doing  
17 business.

18 The argument that “[the requirement] places AEI at a competitive disadvantage  
19 with transporters who otherwise can take their oil directly to a receiving facility such as  
20 D/K,” is unfounded. All facilities issued a standardized permit which allows them to  
21 “transfer” and consolidate multiple shipments of used oil into one container are  
22 required to comply with similar requirements, to safeguard against the inadvertent  
23 dilution that may occur as a result of consolidation. Some transporters are allowed to  
24 consolidate shipments onto one manifest, but they are not authorized to open  
25 containers and consolidate the wastes. This restriction effectively maintains each  
26 generator discretely identifiable in the event that the used oil is later determined to  
27 exceed the permissible levels.

1 Receiving facilities, such as D/K, are required to manage used oil as a  
2 hazardous waste, pursuant to California Health and Safety Code, section 25250.4,  
3 until it has been shown to meet the requirements of section 25250.1(b) or is excluded  
4 from regulation pursuant to California Health and Safety Code, section 25143.2. They  
5 are required to test and document incoming loads of waste pursuant to California  
6 Code of Regulations, title 22, sections 66264.13 and 66264.73 prior to offloading and  
7 mixing with other waste oil. Receiving facilities, such as D/K, may consolidate  
8 individual loads of used oil, but must test at least 10% of those loads for PCBs before  
9 consolidating. Facilities operating under a standardized permit such as AEI, the  
10 Permittee, are required to test all outgoing shipments for used oil either at its facility or  
11 at the receiving facility. In effect, the receiving facilities are only consolidating wastes  
12 consolidated by their own transporters, and wastes collected from household  
13 hazardous waste collections.

14 DTSC believes that through the PCB testing requirements placed on out-going  
15 shipments from authorized transfer facilities, such as AEI, an increase in the volume of  
16 used oil destined for recycling will be realized. In the event that projections are not  
17 realized, DTSC will re-evaluate the merit of the 10% sampling protocol at recycling  
18 facilities and may modify the necessary permit conditions and/or waste acceptance  
19 criteria to achieve an increase in volume of the used oil destined for recycling.

20 In the event that a facility's permit condition such as AEI and a RCRA permitted  
21 facility such as D/K's permit condition and waste analysis plan are in conflict; each  
22 facility must ensure compliance with its own permit conditions.

23  
24 **Appeal Comment 15: Part V., Condition O.2.a(4)**

25 **This condition states: If the used oil contains PCBs at a**  
26 **concentration of 2 ppm or greater, a second sample shall be**  
27 **obtained and tested after cleaning the sampling equipment using**  
**the permanganate cleanup procedure.**

28 This permit condition does not allow for use of another separate piece of  
sampling equipment. There is no reason to require the second sample

1 to be obtained using the same piece of sampling equipment which was  
2 used to collect the first sample. The only standard that should be  
3 specified is that any additional samples must be taken using sampling  
4 equipment that has been cleaned using the permanganate cleaning  
5 procedure.

6 Therefore, this condition must be revised to reflect this necessary  
7 sampling flexibility. Also, pursuant to TSCA regulations, Stoddard  
8 solvent should be used to decontaminate equipment contaminated with  
9 PCBs, not permanganate. AEI requests that this condition be revised to  
10 state:

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

### 15 **Permit Renewal Team Briefing Argument**

16 The Team recommends that the substance of the comment be granted,  
17 but that Petitioner's suggested revisions to the condition be rejected,  
18 because they do not ensure that the alternative cleaning technique  
19 meets DTSC's standards and regulatory standards. The Team  
20 recommends that Condition 0.2.a(4) be revised as follows:

21 "If the used oil contains PCBs at a concentration of 2 ppm or greater, a  
22 second sample shall be obtained and tested. The second sample shall  
23 be obtained using sampling equipment that is new or has been cleaned  
24 using a) the permanganate cleanup procedure (EPA Method 3665A); or  
25 b) an appropriate decontamination procedure that has been approved in  
26 writing by DTSC for use at the Facility."

### 27 **Response:**

28 DTSC grants the substance of the appeal of this permit condition to provide the  
necessary flexibility to decontaminate or use new equipment. Permit condition  
0.2.a(3) and (4) shall be revised to include language as proposed below:

- (3) If the used oil contains PCBs at a concentration of 2 ppm  
or below-greater, the tank contents may be emptied and  
released for shipment. The used oil may then be delivered  
to an authorized used oil transfer or treatment facility.

- 1 (4) If the used oil contains PCBs at a concentration greater  
2 than ~~of 2 ppm or greater~~, a second sample shall be  
3 obtained and tested ~~after cleaning the sampling equipment~~  
4 ~~using the permanganate cleanup procedure~~. The second  
5 sample shall be obtained using sampling equipment that is  
6 new or has been cleaned using a) the permanganate  
cleanup procedure (EPA Method 3665A); or b) an  
appropriate decontamination procedure that has been  
approved in writing by DTSC for use at the Facility.

7 **Appeal Comment 16: Part V., Condition O.2.b.(1) and b.(2)**

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

16 **(1) Take a sample for PCBs testing directly from the Permittee's**  
17 **used oil load and test the Permittee's used oil load separately from**  
18 **any other load.**

19 **(2) Do not unload the truck or commingle the Permittee's used oil**  
20 **load with any other used oil at the receiving facility until PCBs**  
21 **testing indicated that the Permittee's load does not contain PCBs at**  
22 **a concentration of 2 ppm or greater.**

23 As noted above, AEI sends its used oil to D/K. The conditions in Part V.,  
24 Condition O.2.b.(1) and (b)(2) are inconsistent with D/K's WAP. It is  
25 inappropriate for DTSC to require AEI to provide instructions to a  
26 permitted hazardous waste facility to handle waste in a manner  
27 inconsistent with its WAP. It is not an appropriate response to state that  
28 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:

1 "If the Permittee elects to send used oil to a recycling facility that has not  
2 been issued a treatment permit by DTSC, the Permittee shall provide  
3 written instructions to the receiving facility that directs it to test the used  
4 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:

5 (1) Take a sample for PCBs testing directly from the Permittee's used oil  
6 load and test the Permittee's used oil load separately from any other  
7 load.

8 (2) Do not unload the truck or commingle the Permittee's used oil load  
9 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.

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

#### 13 **Permit Renewal Team Briefing Argument**

14  
15 The Team recommends that this comment and Petitioner's requested  
16 revisions to the condition be denied for the reasons cited in the Team's  
17 argument about D/K's WAP in Comments 14 and 16 above, incorporated  
18 herein by reference and for the reasons discussed below. Petitioner's  
19 claims about underground regulations should be denied for the following  
20 reasons. First, DTSC has already denied similar arguments for reasons  
21 stated in DTSC's Response to Appeal Comment 1 in Part V of the  
22 American Oil Final Decision, incorporated herein by reference. Imposing  
23 testing requirements for PCBs on used oil transfer facilities on a permit  
24 by permit basis is not an underground regulation because it implements  
25 existing statutory and regulatory authority. The requirement to include  
26 PCB testing as a permit condition is intended to ensure that a receiving  
27 facility accepts legally authorized used oil. DTSC may impose any  
28 conditions on a hazardous waste facilities permit that are consistent with  
the intent of Chapter 6.5, Division 20, California Health and Safety Code.  
(Health & Saf. Code § 25200(a)). Permits are required to contain  
conditions necessary to meet the operating requirements for permitted  
facilities. (Cal. Code Regs., tit. 22, § 66270.32 (b)(1)). Permits shall also  
contain terms and conditions DTSC determines necessary to protect  
human health and the environment. (Cal. Code Regs. tit. 22,  
§ 66270.32 (b)(2) ).

1 Permitted facilities are required to have and follow a waste analysis plan.  
2 (Cal. Code Regs., tit. 22, § 66264.13). This plan must be included in the  
3 permit application. (Cal. Code Regs., tit. 22, §66270.14 (b)(3)). In  
4 addition, PCB testing requirements in the waste analysis plan will not be  
5 of a uniform general application, but will depend on the operation all  
6 specifics or the individual facility. For all of the above cited reasons, the  
7 Team recommends that the comment and its proposed revisions to the  
8 condition be denied.

7 **Response:**

8 DTSC denies the appeal on this permit condition for the reasons stated in  
9 DTSC's response to appeal comment 14 and for the reasons stated below.

10 In regards to the Petitioner's concern over "[t]he standards imposed in these  
11 conditions. . . constitutes [sic] an underground regulation with potentially significant  
12 environmental consequences due to the failure to comply with the APA and CEQA,"  
13 and the Petitioner's request that the conditions be revised, DTSC has determined that  
14 the arguments are unsubstantiated.

15 Imposing testing requirements for PCBs on used oil transfer facilities on a  
16 permit by permit basis is not an underground regulation, because it implements  
17 existing federal and State statutory and regulatory requirements. The requirement to  
18 include PCB testing as a permit condition is intended to ensure that a receiving facility  
19 accepts used oil meeting the specified criteria in federal and state laws and  
20 regulations. DTSC may impose conditions in hazardous waste facility permits that are  
21 consistent with the intent of Chapter 6.5, Division 20, California Health and Safety  
22 Code (Health & Safety Code, § 25200(a)). Permits are required to contain conditions  
23 necessary to meet the operating requirements for permitted facilities (Cal. Code  
24 Regs., tit. 22, § 66270.32(b)(1)). Permits shall also contain terms and conditions  
25 DTSC determines necessary to protect human health and the environment (Cal. Code  
26 Regs., tit. 22, § 66270.32 (b)(2)). For these reasons, the condition does not violate  
27 the Administrative Procedures Act (APA) (Gov. Code, §§ 11340 et. seq.).  
28

1           Moreover, the courts have determined that the APA's procedural requirements  
2 do not apply where the agency's actions apply the plain language of a statute. It is  
3 only where policies or procedures depart from or embellish upon express statutory  
4 authorization and language that the agency will need to promulgate regulations  
5 (*Engelmann v. State Bd. Of Education* (1991) 2 Cal.App.4<sup>th</sup> " 47, 62; *Morning Star*  
6 *Company v. State Bd. of Equalization* (2006) 38 Cal. 4th 324, 336). The APA  
7 procedural requirements do not apply to the permit condition, regarding PCB testing in  
8 this Permit, because DTSC has express statutory authorization to impose such a  
9 condition. It should also be noted that the imposition of this condition in the Permit is  
10 subject to the right of stakeholders to provide comment on the condition during the  
11 permit process, and is subject to appeal rights following the permit decision.

12           Finally, CEQA provides a separate process for appealing CEQA issues and it is  
13 outside the scope of the permit appeal process. The required environmental analysis,  
14 pursuant to the CEQA (Pub. Res. Code, § 21000 et seq.), was conducted during the  
15 comment period for the Permit. Based upon its findings, DTSC issued a Negative  
16 Declaration in accordance with CEQA guidelines. (See Negative Declaration,  
17 Response to Comments, and Part III. C. of the Permit in the Administrative Record).

18           DTSC considered, but rejected, D/K's environmental arguments in the Final  
19 Decision on Appeal from Facility Permit Decision in the Matter of American Oil (Docket  
20 HWCA 06/07-P0001), issued on October 19, 2007. In that decision, DTSC concluded  
21 1) the idling emissions or wait time will be significantly reduced; 2) the number of  
22 shipments of used oil rejected at treatment facilities will be reduced because suspect  
23 shipments will be tested prior to transport; and 3) the inadvertent mixture of used oil  
24 with used oil containing PCBs will be reduced.

25  
26 **Appeal Comment 17: Part V., Condition O.2.b.(4)**

27           **This condition states: Write the manifest number on the written test**  
28           **results for the used oil that was tested.**

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

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

### 11 **Permit Renewal Team Briefing Argument**

12 The Team recommends that this comment be denied for the reasons  
13 stated in arguments concerning Comments 14 and 16 above,  
14 incorporated herein by reference.

### 15 **Response:**

16 DTSC denies this appeal comment for the following reasons: 1) all facilities  
17 receiving used oil in California must be authorized to do so; and 2) as is stated in  
18 response to comments 14 and 16, the permit condition provides the appropriate  
19 flexibility to conduct business while ensuring protection of human health and the  
20 environment.

### 21 **Appeal Comment 18: Part V., Condition O.2.(b)5**

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

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

1 **Permit Renewal Team Briefing Argument**

2 The Team recommends that this comment be denied. First, the Team  
3 believes the requirement to provide test results quickly is necessary,  
4 because if test results indicate that the receiving facility must reject the  
5 waste, the Permittee needs this information quickly so that it can  
6 implement alternative plans for the waste. Findings of this nature would  
7 trigger further testing of waste at the Facility because these test results  
8 would indicate that the Permittee has received used oil that may contain  
9 PCBs at concentrations above permissible limits. The 24 hour time limit  
is also practical. The condition is authorized by California Code of  
Regulations, title 22, section 66270.32(b )(2), which states that permits  
shall contain terms and conditions that DTSC determines are necessary  
to protect human health and the environment.

10 **Response:**

11 DTSC denies the appeal on this permit condition for the reasons stated in  
12 response to comment 14 and for the reasons stated below.

13 The permit condition requires that if the Permittee exercises permit condition  
14 O.2. option (b), the Permittee must enter into an agreement with the receiving facility  
15 to provide written test results within 24 hours after the test has been performed. The  
16 Permittee may elect to do its own testing under option permit condition O. 2.option (a)  
17 and arrange for the proper management of their wastes accordingly and not rely on a  
18 receiving facility to do the analytical testing. The two options provided to the Permittee  
19 are to ensure that analytical sampling is done in an expeditious manner to determine if  
20 the used oil previously stored in the holding/storage tanks meet the statutory and  
21 regulatory requirements for used oil. In the event that the shipment exceeds the  
22 permissible limits for used oil, the used oil is no longer exempt under federal or State  
23 law and any additional shipment of used oil that was added to the holding/storage  
24 tanks at AEI is considered to have been mixed with hazardous waste or PCB  
25 contaminated oil and for management purposes, the entire contents must be managed  
26 at a heightened level. The holding/storage tanks, as well as trucks used to transport  
27 used oil exceeding the used oil standards, must be emptied prior to holding/storing or  
28 transporting additional shipment of used oil. If the used oil tests above 2 ppm for

1 PCBs, the Permittee must cleanse and decontaminate the holding tanks, as well as  
2 the trucks, used to transport the used oil before additional loads are transferred into  
3 the holding tanks or containers. The information is not only necessary for optimum  
4 facility operation, but also to prevent the unnecessary mixing of used oil suitable for  
5 recycling with used oil that exceeds permissible levels and rendering the used oil  
6 unsuitable for recycling. In accordance with California Code of Regulation, title 22,  
7 section 66270.32(b)(2), DTSC has determined that this standard is not only technically  
8 feasible, but also necessary to protect human health and the environment and denies  
9 the appeal on this permit condition.

10  
11 **Appeal Comment 19: Part V., Condition O.2.b.(6)**

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

14 This standard adopts a standard of general application that is  
15 unnecessary and there is no regulatory requirement to support it. The  
16 standard for used oil is 5 ppm. This standard is inconsistent with both  
17 California and federal regulatory schemes for used oil. Therefore, this  
18 condition must be removed entirely from the permit.

19  
20 **Permit Renewal Team Briefing Argument**

21 The Team recommends that this comment be denied. First, the 2 ppm  
22 or greater requirement is not a rule or standard of general application. It  
23 is a requirement to be considered in a specific case in a specific permit.  
24 The 2 ppm or greater requirement is a screening procedure that enables  
25 the Permittee to avoid testing each individual load for concentrations at  
26 or above 5 ppm. The Permittee has requested authorization from DTSC  
27 to operate a hazardous waste facility to accept and store used oil as  
28 defined in California Health and Safety Code, section 25250.1. One of  
the standards for used oil is that it cannot contain PCBs at 5 ppm or  
greater. As the operator of an offsite hazardous waste facility, the  
Permittee is required to perform waste analysis in accordance with  
California Code of Regulations, title 22, section 66264.13 to ensure that  
the waste accepted meets the definition of used Oil. This is usually  
accomplished by testing. Rather than requiring the Permittee to test  
each incoming load of used oil for PCBs to ensure it meets used oil  
standards, DTSC developed the practical procedure provided in this  
Permit that allows the Facility to accept incoming loads of used oil and

1 consolidate the used oil into larger storage tanks. Once an adequate  
2 quantity of used oil has been accumulated and is ready to be shipped  
3 offsite, the Permittee is required to sample the storage tank and test for  
4 PCBs. A screening level of 2 ppm was chosen to account for the dilution  
5 of consolidating many loads of used oil into larger storage tanks. To  
6 increase flexibility for this Facility, DTSC has allowed for testing of the  
7 storage tank onsite or testing of the outgoing loads at the receiving  
8 facility.

9 Thus, DTSC has provided an approach that is practical and avoids a  
10 greater burden being placed on the Permittee, provided certain  
11 conditions are met See, Response to Comment 4-3.

12 The condition is consistent with State and federal regulatory approaches.  
13 DTSC has statutory and regulatory authority to impose this condition as  
14 discussed in the arguments concerning Conditions 14 and 16 above,  
15 incorporated herein by reference. The 2 ppm threshold is also  
16 consistent with the federal regulatory scheme. According to the  
17 American Oil Final Decision, "Used oil containing detectable levels  
18 (2 ppm) of PCBs is subject to regulation pursuant to 40 Code of Federal  
19 Regulations, section 761.20(e). Used oil containing 2 ppm, but less than  
20 50 ppm of PCBs must be managed in accordance with 40 Code of  
21 Federal Regulations part 270 and can only be burned in a qualified  
22 incinerator as defined in 40 Code of Federal Regulations, section 761.3.  
23 Used oil burners containing 2-49 ppm PCBs are subject to tracking and  
24 notice requirements in 40 Code of Federal Regulations 279, Subparts  
25 G&H and section 279.66 and 40 Code of Federal Regulations, section  
26 279.72(b). Used oil containing PCBs at 50 or above must be managed  
27 in accordance with 40 Code 01 Federal Regulations part 76," (American  
28 Oil Final Decision pp 5-6, incorporated herein by reference). Therefore,  
the condition's use of the 2 ppm screening level is consistent with the  
federal regulatory scheme. For all of the reasons discussed above, the  
Team recommended [sic] that Appeal Comment 19 be denied.

22 **Response:**

23 DTSC denies the appeal on this permit condition for the reasons stated below.  
24 Used oil containing detectable levels, defined as 2 ppm of PCBs, is subject to  
25 regulation pursuant to 40 Code of Federal Regulations, section 761.20(e). Hence, it is  
26 not an arbitrary level or standard of general application, but a concentration at which  
27 specific requirements are triggered under federal law and State law. Used oil  
28 containing levels of PCB at greater than 2 ppm cannot be "recycled", because it fails

1 the purity standard under California Health and Safety Code, section 25250.1(a)(3)(A).  
2 The maximum concentration of PCBs allowable in used oil is 2 ppm under federal and  
3 state law.

4       Used oil containing 2 ppm, but less than 50 ppm; hence 5 ppm, of PCBs must  
5 be managed in accordance with 40 Code of Federal Regulations part 270, and can  
6 only be burned in a qualified incinerator as defined in 40 Code of Federal Regulations,  
7 section 761.3. Used oil burners, processing oil containing 2-49 ppm PCBs, are  
8 subject to tracking and notice requirements in 40 Code of Federal Regulations 279,  
9 Subparts G & H and section 279.66 and 40 Code of Federal Regulations, section  
10 279.72(b). Used oil containing PCBs at 50 ppm or above must be managed in  
11 accordance with 40 Code of Federal Regulations, part 761. Because these are  
12 federal requirements, they must be met throughout the United States. California  
13 cannot depart from these requirements, as such the permit condition is upheld and the  
14 appeal denied. The PCB testing requirements will ensure that used oil, whether  
15 contaminated with PCBs or not, will be handled accordingly and managed at an  
16 authorized facility.

17  
18 **Appeal Comment 20: Part V., Condition O.2.b.(7)**

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

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

28 **Permit Renewal Team Briefing Argument**

      The Team recommends that this comment be denied. California Code  
of Regulations, title 22, section 66264.13, requires facilities to conduct  
waste analysis to ensure the identity of the waste. In this case, the

1 Permittee must ensure that used oil accepted and managed at the  
2 Facility meets the used oil standards in California Health and Safety  
3 Code, section 25250.1. This is normally done by testing the used oil.  
4 Instead of requiring the Facility to test each incoming load of used oil,  
5 this condition provides this Permittee with the flexibility to test the used  
6 oil onsite or have the receiving facility test for them. The specific  
7 conditions concerning used oil vary from permit to permit, to  
8 accommodate the individual characteristics of each facility. The Team's  
9 arguments above explain why the standard is necessary. This condition  
10 is not a standard of general application as discussed in the Team's  
11 arguments about Appeal comment 14, incorporated herein by reference.  
12 With regard to consistency with federal and State regulatory schemes,  
13 please see arguments concerning Condition 16 and 19 above and  
14 Part V, Section 3 in the American Oil Final Decision concerning Appeal  
15 comment 1, incorporated herein by reference.

16 Condition 0.2.b.(7) in Petitioner's Permit is necessary because the  
17 Permit allows the Permittee to transfer its responsibility for waste  
18 analysis to a third -party off-site facility obligated to test the waste. Thus,  
19 it is imperative that DTSC have a method of verifying the results.  
20 Requiring that the receiving facility submit a signed certification under  
21 penalty of perjury provides assurances that the testing was conducted  
22 properly and also provides a mechanism for enforcement against the  
23 third-party receiving/testing facility. It is in the Permittee's best interest  
24 to obtain this information, because the Permittee has the ultimate  
25 responsibility for the waste. Regarding consistency with State and  
26 federal regulatory schemes, please see the arguments in Appeal  
27 Comments 16 and 19 above and Part V, Section 3 in the American Oil  
28 Final Decision, incorporated herein by reference.

**Response:**

DTSC denies the appeal of this permit condition, because the permit condition gives the Permittee the necessary flexibility to transfer its responsibility for waste analysis to a third party; in this case an off-site treatment facility. In addition, requiring that the receiving facility submit a signed certification under penalty of perjury provides assurances that the testing was conducted properly and also provides a mechanism for enforcement against the third-party receiving/testing facility. As is presented in response to appeal comments 16 and 19, the permit conditions are consistent with federal and state regulatory requirements.

1 **VI. CONCLUSION**

2 DTSC finds that appeal comments 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 15 are  
3 meritorious and DTSC will amend and clarify the permit conditions. However, DTSC  
4 finds that appeal comments 14, 16, 17, 18, 19 and 20 are without merit and denies the  
5 appeal on these comments.

6 **VII. ORDER**

7 For the reasons set forth above, DTSC grants appeal comments 4, 5, 6, 7, 8, 9,  
8 10, 11, 12, 13, 15 and denies appeal comments 14, 16, 17, 18, 19 and 20. The permit  
9 is hereby remanded to the Permit Renewal Team to incorporate the pertinent revisions  
10 in the final permit.

11  
12  
13 The permit of September 24, 2007, as revised in accordance with the Final Order,  
14 becomes effective immediately.

15 //original signed by//

16 DATED: May 11, 2009

17 \_\_\_\_\_  
18 Peggy Harris, P.E.

19 Department of Toxic Substances Control  
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