

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:) Docket **HWCA 06/07-P001**
AMERICAN OIL COMPANY)
13736-13740 Saticoy Street) RE: FINAL DECISION ON APPEAL
Van Nuys, California 91402) FROM FACILITY PERMIT DECISION
EPA ID No. CAD 981 427 669) California Code of Regulations,
Title 22, Section 66271.18

I. INTRODUCTION

On May 1, 2007, the Department of Toxic Substances Control (DTSC) granted review of two conditions filed by two petitioners on the Hazardous Waste Facility Permit (Permit) issued by DTSC on December 8, 2006 to American Oil Company (AOC) located at 13736-13740 Saticoy Street, Van Nuys, California (Facility).

On or before, January 12, 2007, Demenno/Kerdoon (D/K) filed a petition for review of DTSC's permit condition that requires analytical testing of Polychlorinated Biphenyls (PCB), herein after referred to as PCB testing, on each truck-to-truck¹ transfer of used oil. For the conditions stated in the order of May 1, 2007, DTSC granted review of the condition requiring PCB testing on truck-to-truck transfers to further evaluate the factual and policy considerations.

On or before January 11, 2007, the Center for Environmental Health (CEH) filed a petition for review of several conditions in the permit. For the conditions stated in the order of May 1, 2007, DTSC denied petition for review of all but one CEH Appeal Comment. DTSC granted review of CEH comment 4, that requested clarification on the permit condition requiring application of a chemical resistant coating to both the floor

¹ Truck-to-truck means the transfer of the contents contained in a tanker truck, typically known as a vacuum truck, to another tanker truck.

1 and walls of the secondary containment area in unit 1 and unit 2.

2 The matters having been fully briefed by the Petitioners and other parties and
3 submitted for decision, DTSC affirms the Permit decision and denies the Appeal filed by
4 D/K and grants the Appeal filed by CEH for the reasons set forth herein.

5

6

II. PROCEDURAL BACKGROUND

7 The DTSC issued a Standardized Hazardous Waste Facility Permit (Permit) to
8 AOC to transfer and store waste oil at 13740 Saticoy Street Van Nuys, California
9 (Facility) on December 8, 2006. Petitioner D/K filed a petition for review (appeal) of
10 DTSC's decision on or before January 12, 2007. A petition for review was also filed by
11 petitioner CEH on or before January 11, 2007. DTSC granted review of two issues.
12 See HWCA 06/07 – P001 dated May 1, 2007.

13 The permit decision has been stayed pursuant to California Code of Regulations,
14 title 22, sections 66271.14 (b)(2) and 66271.15 pending a final permit appeal
15 determination. Since request for review of the permit condition was granted on a
16 proposed new facility, American Oil Company has not been allowed to operate.

17

18

III. JURISDICTION

19 DTSC has jurisdiction over hazardous waste facility permits and the imposition of
20 conditions on such permits pursuant to the California Health and Safety Code section
21 25200, and appeal of permits pursuant to California Health and Safety Code section
22 25186.1(b)(1) and California Code of Regulations, title 22, section 66271.18.

23

24

IV. FACTUAL BACKGROUND

25 A. FACILITY DESCRIPTION

26 LOCATION: American Oil Company is located at 13740 Saticoy, Van Nuys in
27 California. The facility is located on land that is zoned by the City of Rialto for heavy

28

1 industrial land use. AOC has been operating at the site since 2000, as a hazardous
2 waste transporter, transporting used oil and solid waste contaminated with oil.

3 **B. PERMITTED HAZARDOUS WASTESTREAMS, UNITS AND ACTIVITIES:**

4 Used oil is a hazardous waste in California pursuant to California Health and
5 Safety Code section 25250.4. Authorization to transfer used oil is required. Currently
6 AOC operates an exempt transfer facility, which allows AOC to transport waste oil but
7 does not allow AOC to transfer the contents in the containers. AOC's tanker trucks,
8 also referred to as vacuum trucks, leave the facility in the morning, pick up used oil or
9 solid waste and return to the facility in the evening. The used oil and solid waste
10 contaminated with oil may remain at the facility for up to ten days but they must remain
11 in their original containers. The Permit, which has been stayed, allows transfer from
12 tanker trucks to larger (up to 7,000 gallons) tanker trailers; designates an area for
13 loading and unloading of used oil; allows consolidation of solid waste contaminated with
14 oil into one 4.32 cubic yards dump trailer. AOC is expected to send the tanker trailer
15 and dump trailer to appropriate treatment facilities when they are full.

16 There are three hazardous waste management units to be authorized under the
17 Permit: Unit #1 – Loading/Unloading Area. The Loading/Unloading Area will be located
18 within the 13736 Saticoy Street building which measures approximately 40 feet by 90
19 feet, with four-inch berms. Activities allowed in this unit include the transfer of used oil
20 from small tanker trucks to a larger tanker trailer for the purpose of consolidation. The
21 maximum permitted capacity of the unit is 3,000 gallons, including the tanker truck and
22 containers.

23 Unit #2 – Used Oil Storage Area. AOC will store the used oil in a tank trailer with
24 a maximum permitted capacity of up to 7,000 gallons. The tanker trailer will be parked
25 in a covered area between two warehouse buildings. The Storage Area measures
26 approximately 14 feet by 90 feet, with a 4-inch berm in the front and a two-foot berm
27 in the back. The only waste allowed in this area will be used oil.

28

1 Unit #3 – Solid Waste Storage Area. The area will measure approximately 14
2 feet by 20 feet and will be in the parking lot outside the northern end of the 13736
3 Saticoy Street building. The maximum permitted storage capacity of this Unit is 4.32
4 cubic yards in one dump trailer.

5 6 **V. DISCUSSION**

7 This Decision addresses only the two Appeal Comments that were granted
8 review by DTSC. Issues raised by Petitioners and others in briefing documents that are
9 not germane to the two Appeal Comments are outside the scope of review and are not
10 addressed. Each Appeal Comment is addressed in turn.

11 **Appeal Comment 1:**

12 DTSC's PCB testing requirements at used oil transfer facilities, specifically PCB
13 testing on each truck-to-truck transfer, will have adverse unintended consequences for
the used oil industry and the environment. (D/K Comment 1)

14 **Response:**

15 **DTSC denies the appeal on this comment for the reasons stated below.**

16 **PCB testing is not carried out on all truck-to-truck transfers but is instead**
17 **reserved only for the retained samples of shipments that were consolidated into a**
18 **load that later exceeded 2 parts per million (ppm).**

19 D/K argues that the testing requirements documented in a DTSC memorandum
20 will have adverse negative consequences on the used oil industry and the environment.
21 However, based on the information available to DTSC and as cited in a memorandum
22 from Watson Gin, dated March 15, 2007 "(t)he PCB testing requirement along with
23 other testing requirement at transfer facilities is the only way for a facility to know
24 whether or not they are allowed to receive the shipment of used oil legally."

25 **1). Negative Impacts on Transfer Facilities and Transporters in California**

26 D/K argues that the testing requirements will have a serious effect on used oil
27 transfer facilities in rural areas of California. However, because AOC is located in a
28 urban area the comment is not applicable. Moreover, the information available to

1 DTSC does not indicate that the PCB testing requirements will have a negative
2 statewide impact. Based on the information available to DTSC, DTSC believes that the
3 transportation pattern of used oil from rural areas to any instate receiving facilities will
4 not be changed because of PCB testing requirements nor will they increase traffic
5 congestion or the miles traveled.

6 **2). Negative Impacts on Communities Near Used Oil Recycling Facilities.**

7 D/K argues that the PCB testing requirements would increase the long term
8 impacts that recycling facilities have on neighboring communities. The permit
9 conditions in AOC's permit are intended to prevent the mixture of wastes, i.e used oil
10 with other wastes that would render the used oil untreatable at the permitted facility.
11 AOC has six registered trucks which will be used to transport used oil. AOC has agreed
12 to the conditions of the permit. DTSC believes that with the proper pre-acceptance
13 arrangement and scheduling with receiving facilities the following should occur: 1) the
14 idling emission or wait time will be significantly reduced; 2) the number of shipments of
15 used oil rejected shipments at treatment facilities will be reduced because suspect
16 shipments will be tested prior to transport; and 3) the inadvertent mixture of used oil
17 with used oil containing PCBs will be reduced.

18 **3). Out of State Transport and Negative Impacts on the Used Oil Market.**

19 D/K argues that the testing requirement will discourage compliance and may
20 encourage transporters to circumvent California standards and ship used oil out of
21 state. The requirement to test used oil for PCB concentrations is not anticipated to
22 impact out of state transport of used oil. Used oil containing detectable levels (2 ppm)
23 of PCBs is subject to regulation pursuant to 40 Code of Federal Regulations section
24 761.20(e). Used oil containing 2 ppm, but less than 50 ppm of PCBs must be managed
25 in accordance with 40 Code of Federal Regulations part 270 and can only
26 be burned in a qualified incinerator as defined in 40 Code of Federal Regulations
27 section 761.3. Used oil burners containing 2-49 ppm PCBs are subject to tracking and
28 notice requirements in 40 Code of Federal Regulations 279, Subparts G & H and

1 section 279.66 and 40 Code of Federal Regulations section 279.72(b). Used oil
2 containing PCBs at 50 or above must be managed in accordance with 40 Code of
3 Federal Regulations part 761. Because these are federal requirements, they must be
4 met throughout the United States. The PCB testing requirements will ensure that
5 used oil whether contaminated with PCBs or not will be shipped to an authorized
6 facility.

7 **4). Current PCB Testing Protocols and Reasonable Alternatives.**

8 The permit conditions at AOC will not change how permitted hazardous waste
9 facilities screen and trace the source of PCBs from shipments that exceed the
10 allowable concentrations. The permit conditions at AOC are practical because testing
11 of each tanker truck is only required after the test result in the outgoing tanker trailer
12 confirms that the used oil contains PCBs at a concentration of 2 ppm or greater.

13 In addition, AOC agreed to the conditions of the permit. PCB testing before
14 unloading a shipment at a recycling facility is necessary to reduce the inadvertent
15 dilution that occurs when multiple shipments of used oil are mixed with another
16 shipment that contains high concentrations of PCBs. Used oil recycling facilities in
17 California operated by Industrial Services and Evergreen, test used oil in each in-
18 coming truck before it is unloaded into the tanks. Neither facility has cited backlogs or
19 other negative impacts.

20 DTSC believes that the conditions of the permit are necessary to ensure that
21 used oil is not mixed with used oil containing a high concentration of PCBs thus
22 rendering the used oil un-recycleable.

23 **C. The DTSC Permit Condition Requiring PCB Testing Is Not An Underground**
24 **Regulation**

25 D/K contends that the permit condition requiring PCB testing is a change in
26 regulatory policy and that the March 15, 2007 memorandum is an underground
27 regulation that must be formally adopted pursuant to the Administrative Procedures Act
28

1 (APA). D/K is mistaken as to both contentions.

2 First, the June 15, 2007 memorandum from Deputy Director Watson Gin to Ray
3 Leclerc, Permit Renewal Team Leader provides direction in determining permit
4 conditions for used oil transfer facilities. The memorandum suggests what permit
5 conditions "should" be considered in establishing the appropriate permit conditions at
6 used oil transfer facilities. The attached chart underscores this interpretation in that it
7 lists facilities that the team is not working on that have the PCB testing permit condition,
8 including one that "may" require a modification to add the requirement, and eighteen
9 permits that the team is working on. The memorandum in no way pre-determines or
10 decides how permit conditions will be established for the affected facilities. The
11 memorandum is merely intended to provide direction and consideration of the
12 requirement for the permit renewal team and is not a change in DTSC regulatory policy.
13

14
15 Moreover, the requirement to include PCB testing as a permit condition is, as
16 noted above, intended to ensure that a receiving facility accepts legally authorized used
17 oil. It is well settled that DTSC has the authority to impose permit conditions on each
18 hazardous waste facility specifying the types of hazardous waste that may be accepted
19 for transfer, storage treatment or disposal. (Health & Safety Code, §25200(a).) In
20 addition, DTSC may impose any other conditions on a hazardous waste facilities permit
21 that are consistent with the intent of the Hazardous Waste Control Law (HWCL). (Ibid)
22

23 In this case, DTSC is imposing a permit condition that ensures the facility and
24 the receiving facility accept used oil and not another type of hazardous waste
25 contaminated with PCBs. Such a requirement is consistent with the intent of the HWCL
26 that transfer facilities and receiving facilities accept, transfer and dispose of the type of
27 hazardous waste allowable under the permit. The requirement is a reasonable means
28

1 of protecting public health and the environment.

2 The requirement to test for PCBs in the AOC permit is not a rule or standard of
3 general application. It is a requirement to be considered in a specific case, as
4 suggested by the use of the words "should" in the March, 2007 memorandum.

5 Finally, AOC was given notice and an opportunity to be heard in establishing the
6 permit condition. AOC had no objection to the requirement so it cannot be deemed as
7 an attempt on DTSC's part to improperly impose a permit condition without due process
8 of the law. Instead, the PCB testing requirement was considered and determined
9 to be necessary to include as a permit condition for AOC.
10

11 **Appeal Comment 2:**

12 The permit should be revised to require the sealing of walls in the loading and
13 unloading area within the secondary containment area (CEH comment 4)

14 **Response:**

15 DTSC grants the appeal on this comment and will clarify in the permit conditions
16 that application of a sufficiently impervious material is applicable to both the floor and
17 walls of the secondary containment system in units 1 and 2.

18 **VI. CONCLUSION**

19 DTSC finds that CEH appeal comment # 4 is valid and will amend and clarify the
20 permit conditions to require that an impermeable coating be applied to the floor and
21 walls of the secondary containment areas in units 1 and 2. However, DTSC finds that
22 D/Ks Appeal Comment # 1 has not been substantiated. Therefore, DTSC denies the
23 appeal on appeal comment 1.
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VII. ORDER

For the reasons set forth above, DTSC affirms grants CEH appeal and denies D/K's Appeal. The stay of the Permit decision is hereby rescinded, and the Permit decision shall be effective this date.

//original signed by//

DATED: October 19, 2007

P J J

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