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January 11, 2007



Watson Gin, Deputy Director
Hazardous Waste Management Program
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Re: Petition for Review by Center for Environmental Health concerning Final Standardized Hazardous Waste Facility Permit – American Oil Company

Dear Mr. Gin:

I represent the Center for Environmental Health (“CEH”), a 501 (c) (3) California corporation dedicated to environmental protection and enhancement. CEH filed detailed comments on the Draft Standardized Hazardous Waste Facility Permit and Draft Negative Declaration in regard to American Oil Company on May 10, 2006. On the same date, I appeared for CEH at the public hearing that took place in Panorama City, California and provided comments to DTSC staff. Pursuant to 22 CCR section 66271.18, CEH hereby submits this petition for review challenging the issuance of the Final Standardized Hazardous Waste Facility Permit to American Oil Company with an effective date of January 17, 2007. The issues discussed below raise important policy considerations which DTSC should, in its discretion, review. These policy considerations include, among other things, that the project as approved does not fully protect the health and safety of the surrounding residents who live within .1 mile from the facility, and that American Oil Company should be required to obtain a conditional use permit from the City of Los Angeles before a final permit becomes effective.

I. Statement of Reasons Supporting Review

A. American Oil Company Must First Obtain a Conditional Use Permit from the City of Los Angeles as a Pre-Condition to DTSC Issuing a Final Permit

During the public comment period, CEH raised the issue of the requirement of American Oil Company to first obtain a conditional use permit from the City of Los Angeles prior to DTSC issuing a final permit. The issue was raised both in CEH’s written comments as well as at the public hearing. See Comment #2-6 in DTSC’s “Response to Comments document for American Oil Company. CEH also submitted a letter directly to zoning engineer Peter Kim of the City of Los Angeles Building and Safety Department regarding the need for American Oil Company to obtain a conditional use permit. Exhibit A.

In DTSC's response, the agency relied on a letter dated October 30, 2003 from the City of Los Angeles, Department of Building and Safety stating that American Oil Company's operation is a permitted use in an M2 Zone. Exhibit B. Based on this letter, DTSC concluded that American Oil does not need a conditional use permit. CEH disagrees.

The October 30, 2003 letter relied on by DTSC was in response to a letter from Stephen D. Friday, President of American Oil Company dated October 8, 2003 in which Mr. Friday describes the company's operations as a hazardous waste transporter engaging in "the operation of on-site waste oil transfer between tanker trucks via pump." Exhibit C. No further information is provided by American Oil to the City of Los Angeles with respect to the true nature of the operations to take place at the facility.

Unbeknownst to the City of Los Angeles, the proposed activities at American Oil Company will encompass far more than an "on-site waste oil transfer between tanker trucks via pump." This project will allow a facility designated as a transporter and a 10 day transfer facility with a considerable history of violating numerous statutory and regulatory requirements governing hazardous wastes to substantially expand its operations to cover hazardous waste activities not disclosed to the City of Los Angeles. Specifically, the project will allow American Oil Company to pump used oil from smaller tanker trucks to a larger tanker trailer (7,000 gallons), store oil for up to a year at the facility in the 7,000 gallon tanker trailer, transfer solid waste contaminated with used oil from drums into a 4.32 cubic yard dump trailer, designate an area inside the warehouse building for loading and unloading used oil, and construct berms for containment in the area where the trailer will be parked and the area inside the warehouse building to be used for loading and unloading used oil.

Based on American Oil's description of the project, Peter Kim, Zoning Engineer for the City of Los Angeles responded to Mr. Friday by stating that "On-site waste oil transfer between tanker trucks via pump" appears to be similar to a "transfer business." Based on the incomplete description provided by American Oil Company, Mr. Kim concluded that a "transfer business is a permitted use in an M-2 Zone." While CEH is unaware of any definition of "transfer business" in the Los Angeles Municipal Code, "transfer business" is a permitted use in a M2 light industrial zone.¹

While the proposed activities at American Oil include operations of a transfer business, the company actually proposes to operate primarily as a hazardous waste facility in a M2 zone. Under these circumstances, the Los Angeles Municipal Code requires that American Oil apply for and obtain a Conditional Use Permit from the City prior to operation. In particular, Chapter 1, Article 2, Section 12.24 (U) of the Municipal Code provides that certain uses and activities may be permitted only if a conditional use

¹ According to the Los Angeles Municipal Code a "transfer business" is a use permitted in the C2 commercial zone. The M2 light industrial zone incorporates certain uses that are permitted in the M1 limited industrial zone, which in turn incorporates certain uses that are permitted in the C2 commercial zone.

permit is approved by the City Planning Commission as the initial decision-maker or the City Council as the appellate body, including the following:

10. **Hazardous Waste Facilities in the M2 and M3 Zones** where the Principal use of the land is for the storage and/or treatment of hazardous Waste as defined in Section 25117.1 of the California Health and Safety Code. In making any finding required pursuant to this section, the City Planning Commission shall consider whether the proposed use is consistent With the adopted County Hazardous Waste Management Plan and any additional siting criteria adopted by the City... Los Angeles Municipal Code, Ch.1, Sec.12.24(U)(10).²

CEH believes that DTSC has committed error in relying on the Peter Kim letter that American Oil does not need a conditional use permit from the City of Los Angeles. It is clear that the underlying activity is much more than a simple transfer facility and that American Oil misrepresented the activities to take place to the City of Los Angeles. Moreover, the response offered by DTSC in the record does not demonstrate that the agency communicated with the City after CEH's comments to clarify what hazardous waste activities would be taking place at the facility and whether the City re-evaluated its position that the operation is a permitted use in an M2 zone. This is significant because on January 8, 2007, I spoke with Peter Kim from the City of Los Angeles. Mr. Kim informed me that while he signed the October 30, 2003 letter to Mr. Friday he did not write the letter. The letter was written by Suzanne Kusik, Structural Engineering Associate who is referenced in the letter. Ms. Kusik has not worked for the City for 2-3 years. Mr. Kim informed me that no one from DTSC has contacted him since the 2003 letter. Mr. Kim also told me that he did not receive my letter of May 18, 2006 in which I raised the issue to the City for the first time. Most significant is that Mr. Kim agrees with the position advocated by CEH in these proceedings. The City takes at face value the description of the project by the applicant. When the City received Mr. Friday's letter describing the project, the City believed it was a complete and accurate description. The City did nothing more to inquire about the true nature of the project. The City used Mr. Friday's description of "on-site waste oil transfer between tanker trucks via pump" as the actual project and determined that it was most equivalent to a "transfer business" in the Code which is a permitted use in an M2 zone. However, Mr. Kim emphasized that if the project was more than a "transfer business," such as a hazardous waste facility, it may not be allowed in the M2 zone.

On January 9, 2007 I spoke with Ken Gill who has assumed Mr. Kim's position when Mr. Kim signed the 2003 letter to Mr. Friday. Mr. Gill informed me that he has not heard from DTSC regarding this project. I was then referred to Lordis Green, a Zoning Administrator. I inquired whether the Planning Commission would require a conditional

² Section 25117.1 of the California Health and Safety Code defines "Hazardous Waste Facility" as "all contiguous land and structures, other appurtenances, and improvements on the land used for the treatment, transfer, storage, resources recovery, disposal, or recycling of hazardous waste. A hazardous waste facility may consist of one or more treatment, transfer, storage, resource recovery, disposal or recycling hazardous waste management units, or combinations of these units."

use permit for a hazardous waste facility. Ms. Green looked at the Code and referenced the same section in the Municipal Code that CEH cited to DTSC. Ms. Green believed that Los Angeles Municipal Code, Ch.1, Sec.12.24(U)(10) was the applicable code section unless there was a State or other exemption involved.³ Ms. Green opined that the applicant would need to contact the Planning Department but could not offer more without knowing about all the details of the project. CEH is concerned that without DTSC requiring the local land use permit be obtained prior to its own approval, the American Oil hazardous waste facility will slip through the cracks of the City and the company will not go through the appropriate process before the Planning Commission.

Part 111. B.1. of the Permit does not require American Oil to obtain all necessary permits and approvals from other agencies prior to the permit becoming effective. This permit provision is not in the public interest and must be modified to require American Oil to obtain the requisite permits and approvals prior to this permit taking effect. CEH cites for or example, the draft standardized permit for Industrial Service Oil Company, 1700 Soto Street, Los Angeles, CA 90023 where DTSC required the company to obtain local land use approvals prior to the permit becoming effective. Part V (Special Conditions) Section 2 u. (page 61) of the draft permit for Industrial Service Oil Company states:

“The facility shall not begin construction of any proposed hazardous waste units until it obtains all permits required by all state and local regulatory agencies. Pursuant to California Health and Safety Code section 25199.3(a) the permit for the proposed units shall not become effective until the applicant is granted a local land use permit.”

Why DTSC has deviated in this case to issue a Final Permit without first requiring American Oil to obtain all necessary permits and approvals from other agencies is not clear to CEH. DTSC should take a hard look at the American Oil permit provision in Part III. B. 1. and strengthen it so that it is consistent with the Industrial Service Oil Company permit.

B. American Oil Company is Required to Obtain a Finding of Consistency With the Los Angeles County Hazardous Waste Management Plan

American Oil Company is required to obtain a finding of consistency with the Los Angeles County Hazardous Waste Management Plan before it may engage in the proposed operations. See May 10, 2006 Letter from Michael Freund on behalf of CEH to DTSC. The City Planning Commission must find that the proposed use is consistent with the County Hazardous Waste Management Plan. Los Angeles Municipal Code, Chap 10, Article 2, Section 12.24, (U) (10). American Oil seeks to expand its operation to function as an off-site hazardous waste facility. The County Hazardous Waste Management Plan requires that proponents of an off-site hazardous waste facility apply to the Los Angeles County Department of Public Works for a finding of conformance to ensure consistency

³ CEH does not believe such an exemption exists.

with the County Hazardous Waste Management Plan. See Los Angeles County Hazardous Waste Management Plan, vol. 1, p. 22 (Sept. 1988)⁴

C. DTSC Should Revise the Permit to Require American Oil Company to Seal The Walls of the Containment Area

During the comment period, CEH commented that Title 22 regulations require that secondary containment be "sufficiently impervious" to contain leaks and spills and that the walls of the loading/unloading area and the tanker trailer will use cinderblock which is known to be porous material. CEH earlier requested that these walls be sealed with a coating to make them impervious. Comment # 2-4 in DTSC's "Response to Comments." DTSC responded by adding a permit condition to require application of a chemical resistant coating to the floor of the secondary containment system but did not require the same for the walls of the containment area. Permit Part V., Special Condition S. Again, CEH seeks the safest project to protect the surrounding community. It is important for the walls to be sealed with a coating as well, since they are made of cinderblock, which is porous. DTSC should revise the permit condition language to specifically refer to sealing both the floor and the walls of the containment areas.

D. DTSC Should Exercise its Discretion to Ensure a Safer Project by Requiring American Oil Company to Install Berms that are Higher than Six Inches

During the comment period, CEH commented that the open end (end that the trailer enters and leaves the containment area) only has a 6-inch berm to contain liquids. CEH's concern was that if there was a catastrophic release from the tanker trailer, due to the narrowness of the trailer storage area, a large amount of released liquid may flow over the 6-inch berm and out into the parking lot. Comment # 2-5 in DTSC's "Response to Comments." See also Comment # 2-11 ("The berm on the north end should be enlarged to provide greater protection.") DTSC's response is that a "berm higher than six inches would hinder movement of the tanker trailer coming in and out the area." CEH disagrees that a berm any higher than six inches would hinder the movement of the tanker trailer. DTSC should look at hazardous waste container storage areas at other hazardous waste treatment, storage and disposal facilities that have "traversable" berms which are higher than six inches and that do not impede trailer movement in and out of the area.

E. The Project Documents Should Have Been Provided to the Public in Spanish

CEH has raised the issue of DTSC's failure to provide the project documents to the public in Spanish. See Comment # 2-1 in DTSC's "Response To Comments." DTSC responded that the agency conducted a community survey and a walkthrough of the neighborhood prior to the public comment period and believed that although a majority of the residents are Hispanics, the majority of those encountered and interacted with

⁴ The County Hazardous Waste Management Plan contains 27 hazardous waste management facility siting criteria that guide evaluation of the proposed use. See Los Angeles County Hazardous Waste Management Plan, vol. 3, p. 22 (Sept. 1988).

spoke and understood English. On this basis, DTSC did not translate any of the project documents to the community.

It is undisputed that a majority of the community surrounding the facility are Hispanic. In fact, according to the Los Angeles Unified School District, 77.7 % of the students at the nearby Ranchito Elementary School are Hispanic. At the public hearing on this issue, no one from the surrounding community attended. DTSC must ask itself whether the agency is doing what it can to promote community involvement. It should not be acceptable for this agency to approve projects with no community input. CEH believes that by not preparing the project's documents in Spanish, DTSC has deprived a large number of neighbors from being fully informed of the project which resulted in no community participation. DTSC can and should do better to foster public participation.

The record does not support DTSC's decision not to translate the project documents into Spanish. The community survey and walkthrough conducted by DTSC staff person Jesus Cruz contacted very few persons in the community. DTSC should state how many persons were contacted by Mr. Cruz in the record. Such a disclosure will demonstrate that the number of persons contacted who spoke and understood English was negligible and not a credible or statistically valid survey of how many people in the neighborhood actually spoke English. Accordingly, DTSC's methodology cannot support denying the majority of the community information about the project in their own language.

DTSC responds that the agency "is committed to federal and state environmental justice goal and policies and has incorporated environmental justice principles within its public participation program." Unfortunately, the record does not support DTSC's commitment to environmental justice principles in this case. See El Pueblo Para el Aire y Agua Limpio v. County of Kings (Dec. 30, 1991) No. 366045, 22 Environmental Law Reporter 20357 (Sacramento Superior Court) which required that translation of the executive summary in the EIR be completed.

II. Conclusion

CEH believes that this petition raises important policy considerations related to whether the Permit for this project will be more protective of the environment and public health. In light of the legal requirements set forth in the Los Angeles Municipal Code combined with American Oil Company's inaccurate description of the proposed operations at its Van Nuys facility to the City of Los Angeles, CEH urges DTSC to reconsider its issuance of the Final Permit and require the company to first apply for and obtain a Conditional Use Permit and a finding of consistency with the Los Angeles County Hazardous Waste Management Plan. DTSC should hold American Oil Company to the same standard as it did with Industrial Service Oil Company. Accordingly, DTSC must place conditions in the permit to require American Oil to obtain all necessary approvals and permits prior to issuing a final permit.

DTSC should exercise its discretion to ensure a safer project by revising the Permit to require American Oil Company to seal the walls of the containment area and to install

berms that are higher than six inches by applying "traversable" berms that would not impede trailer movement in and out of the facility. Finally, DTSC's survey of English speakers in the community only contacted a few individuals. In order to facilitate community involvement and environmental justice in an area that is overwhelmingly Hispanic, DTSC must provide its project documents in the language spoken by the majority of the community. By doing so, CEH believes that the environmental justice goals set by DTSC will become more of a reality and public participation in these projects will increase.

Sincerely,

Michael Freund
Attorney for Center for Environmental
Health

cc: Michael Green, Director CEH
Molinder S. Sandhu, DTSC

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1915 ADDISON STREET
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May 18, 2006

Peter Kim
Zoning Engineer
Department of Building and Safety
City of Los Angeles
201 North Figueroa Street
Los Angeles, CA 90012

Re: Permitting of American Oil Company Proposed Hazardous Waste Facility Located In
M2 Light Industrial Zone in Van Nuys, California

Dear Mr. Kim:

I represent the Center for Environmental Health ("CEH"), a 501(c)(3) California corporation dedicated to environmental protection and enhancement. One of CEH's objectives is to prevent and reduce toxic hazards to human health and the environment, specifically from pollution of air, water and land in California. CEH maintains its office in Oakland, California. I am writing to you regarding the role of the City of Los Angeles in granting approval to proposed activities at the American Oil Company ("American Oil") facility located at 13736-13740 Saticoy Street, Van Nuys, California 91402.

American Oil is seeking a hazardous waste facility permit from the California Department of Toxic Substances Control ("DTSC") for proposed used oil storage and consolidation activities at its Van Nuys facility. American Oil, which has been operating as a used oil transporter, must obtain a permit from DTSC for its proposed activities because used oil is regulated as a hazardous waste in California. CEH recently submitted comments to DTSC concerning the draft Standardized Hazardous Waste Facility Permit and Draft Negative Declaration for American Oil's Van Nuys facility. A copy of CEH's comments is enclosed with this letter.

Among other things, CEH has objected to the lack of opportunity for the public to know about or meaningfully participate in the DTSC permitting process for the American Oil facility. Homes are located less than 0.1 miles from the facility and an elementary school is less than 0.6 miles away. The community is predominantly Hispanic, yet no notices or fact sheets of the proposed activities were published in Spanish. Now it appears the City of Los Angeles proposes to compound this injustice by allowing the facility to operate without a required Conditional Use Permit, the process for which would allow the public to be heard.

CEH has received copies of correspondence from American Oil to you that we believe inaccurately describe the proposed operations to be conducted at the facility. Based on American Oil's misleading description, the City improperly granted approval to the proposed

EXHIBIT A

operations without requiring a Conditional Use Permit or a finding of conformance with the Los Angeles County Hazardous Waste Management Plan ("CoHWMP"), as required by the City of Los Angeles Municipal Code.

In an October 3, 2003 letter to you, Stephen Friday, writing on behalf of American Oil, described the proposed operations as simply "on-site waste oil transfer between tanker trucks via pump." Mr. Friday failed to mention that, in addition to waste oil transfer, American Oil seeks to conduct other, more significant proposed operations -- used oil and contaminated solids storage -- that trigger the City's permitting requirements because the facility is located in a M2 light industrial zone. Specifically, American Oil would maintain at its facility a 7,000 gallon tanker trailer, which would receive used oil from smaller tanker trucks. The tanker trailer would be stored at the facility for up to one year before being transported off site. In addition, American Oil would consolidate solids contaminated with used oil into a 4.32 cubic yard dump trailer, which also would be stored at the facility for up to one year. These activities are described in greater detail in the draft permit, a copy of which is enclosed with this letter.

Based on Mr. Friday's description of the proposed activities, you sent Mr. Friday a letter on October 8, 2003 stating that "on-site waste oil transfer between tanker trucks via pump" appears to be similar to a "transfer business." While CEH is unaware of any definition of "transfer business" in the Los Angeles Municipal Code, "transfer business" is a permitted use in a M2 light industrial zone.¹ A copy of the correspondence between Mr. Friday and yourself is enclosed with this letter.

While the proposed activities at American Oil include operations of a transfer business, American Oil proposes to operate primarily as a hazardous waste facility in a M2 zone. Under these circumstances, the Municipal Code requires that American Oil apply for and obtain a Conditional Use Permit from the City before it may engage in the proposed operations. The City Planning Commission also must find that the proposed use is consistent with the CoHWMP. Specifically, Chapter 1, Article 2, Section 12.24(U) of the Municipal Code provides that certain uses and activities may be permitted only if a conditional use permit is approved by the City Planning Commission as the initial decision-maker or the City Council as the appellate body, including the following:

10. Hazardous Waste Facilities in the M2 and M3 Zones where the principal use of the land is for the storage and/or treatment of hazardous waste as defined in Section 25117.1 of the California Health and Safety Code. In making any finding required pursuant to this section the City Planning Commission shall consider whether the proposed use is consistent with the adopted County Hazardous Waste Management Plan and any additional siting criteria adopted by the City . . .

¹ "Transfer business" is a use permitted in the C2 commercial zone. The M2 light industrial zone incorporates certain uses that are permitted in the M1 limited industrial zone, which in turn incorporates certain uses that are permitted in the C2 commercial zone.

Los Angeles Municipal Code, Ch. 1, Sec. 12.24(U)(10).²

American Oil also is required to obtain a finding of conformance with the CoHWMP before it may engage in the proposed operations. American Oil seeks to expand its operations to function as an off-site hazardous waste facility. The CoHWMP requires that proponents of an off-site hazardous waste facility apply to the Los Angeles County Department of Public Works for a finding of conformance to ensure consistency with the CoHWMP. See Los Angeles County Hazardous Waste Management Plan, vol. 1, p. 22 (Sept. 1988).³

The reason these procedural protections, including the requirement to obtain a Conditional Use Permit, exist is because the public is rightly concerned that the management of waste materials, if not conducted properly, can result in significant risks to human health and the environment. That is the reason the Municipal Code requires a Conditional Use Permit in the first place.

In light of these requirements and American Oil's inaccurate description of the proposed operations at its Van Nuys facility, CEH urges the City of Los Angeles to reconsider its approval of American Oil's proposed operations and require the company to apply for and obtain a Conditional Use Permit and a finding of conformance with the CoHWMP. CEH requests that you contact the DTSC Project Manager, Mr. Alfred Wong, as soon as possible to inform him of these specific City permitting requirements for proposed hazardous waste facilities located in the M2 zone. Mr. Wong may be contacted at (510) 540-3946 or awong@dtsc.ca.gov.

The public comment period for the draft permit for American Oil closes on May 22, 2006. We greatly appreciate your consideration of these requests as soon as possible.

Sincerely,

Original Signed by

Michael Freund

cc: Los Angeles City Councilman Tony Cardenas
Assemblymember Cindy Montañez
State Senator Richard Alarcon

² Section 25117.1 of the California Health and Safety Code defines "Hazardous Waste Facility" as "all contiguous land and structures, other appurtenances, and improvements on the land used for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous waste. A hazardous waste facility may consist of one or more treatment, transfer, storage, resource recovery, disposal, or recycling hazardous waste management units, or combinations of these units."

³ The CoHWMP contains 27 hazardous waste management facility siting criteria that guide evaluation of the proposed use. See Los Angeles County Hazardous Waste Management Plan, vol. 3, p. 22 (Sept. 1988).

Romel Pascual, Office of the Mayor
Alfred Wong, DTSC Project Manager
Michael Green, Director, CEH

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201 NORTH FIGUEROA STREET
LOS ANGELES, CA 90012

ANDREW A. ADELMAN, P.E.
GENERAL MANAGER

RAYMOND CHAN
EXECUTIVE OFFICER

October 30, 2003

Stephen D. Friday
Permit Pro
545 Veteran Avenue
Los Angeles CA 90024

In response to your request of October 8, 2003, please be advised of the following:

~~You~~ requested determination that "on-site waste oil transfer between tanker trucks via pump" is a permitted use in an M2-1 zone. "On-site waste oil transfer between tanker trucks via pump" appears to be similar to a "transfer business." A "transfer business" is a permitted use in an M2 Zone.

This information is provided as of October 30, 2003. Should you need any further assistance pertaining to this matter, contact Suzanne Kusik, Structural Engineering Associate at (213) 482-6880.

Original Signed by

Peter Kim
Zoning Engineer
Department of Building and Safety

cc: Office File

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PROFESSIONAL EXPEDITING SERVICE

545 Veteran Avenue
Los Angeles, CA 90024

October 8, 2003

Peter Kim, Zoning Engineer
Department of Building & Safety
City of Los Angeles
201 N. Figueroa St.
Los Angeles, CA 90012
(213) 482-0473

Re: Letter of Permitted Land Use

Dear Mr. Kim:

The American Oil Company, as hazardous waste transporter located in Van Nuys, is currently applying for a permit that will authorize the operation of on-site waste oil transfer between tanker trucks via pump. The California Department of Toxic Substances Control who will be issuing this permit is requesting that the American Oil Company furnish a letter from the City of Los Angeles stating this type of land use is allowed under an M2-1 zone per the Los Angeles Municipal Code. We have consulted the zoning public counter regarding this matter, and they have confirmed it is permissible.

Would you be so kind as to write a letter to this effect addressed to my client? A copy of this letter will be forwarded to the DTSC. If you have any questions please call me at (310) 569-8588. Thank you for the consideration.

Please address letter to: American Oil Company
13740 Saticoy Street
Van Nuys, CA 91402

Sincerely,

Original Signed by

Stephen D. Friday
President