

1 STATE OF CALIFORNIA
2 ENVIRONMENTAL PROTECTION AGENCY
3 DEPARTMENT OF TOXIC SUBSTANCES CONTROL
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6
7 AMERICAN OIL COMPANY
8 13736-13740 Saticoy Street
9 Van Nuys, California 91402

DOCKET HWCA 06/07-P001
RE: ORDER GRANTING PETITION
FOR REVIEW OF TWO CONDITIONS
AND DENYING REVIEW OF
OTHER CONDITIONS

10
11 EPA ID No. CAD 981 427 669

California Code of
Regulations, Title 22
Section 66271.18

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14 **I. INTRODUCTION**

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16 On December 8, 2006, the Department of Toxic Substances Control
17 (Department) issued a Standardized Hazardous Waste Facility Permit (Permit) decision
18 for the American Oil Company storage and treatment facility located at 13736-13740
19 Saticoy Street, Van Nuys, California (Facility). Demenno/Kerdoon (Petitioner D/K) filed
20 a petition for review (appeal) of the Department's permit decision on or before January
21 12, 2007. Petitioner D/K appeals a provision in the draft permit that requires PCB
22 testing on each truck-to-truck transfer of used oil (D/K Comment 1).

23 In addition, the Center for Environmental Health (Petitioner CEH) also filed a
24 petition for review (appeal) of the Department's permit decision on or before January 11,
25 2007. Petitioner CEH appeals the permit decision on several grounds. First, CEH
26 suggests that the Facility must first obtain a conditional use permit from the City of Los
27 Angeles prior to the Department issuing the final permit (CEH Comment 2). Petitioner
28 CEH states that the Facility is required to obtain a finding of consistency with the Los

1 Angeles County Hazardous Waste Management Plan before it may engage in the
2 proposed operations (CEH Comment 3). Petitioner CEH also contends that the permit
3 should be revised to require the sealing of walls in the loading/unloading area within the
4 secondary containment area (CEH Comment 4). Moreover, Petitioner CEH states that
5 the Permit should require the Facility to install berms higher than six inches in the north
6 end of the Facility (CEH Comment 5). Finally, Petitioner CEH states that the
7 Department failed to provide the project documents related to the permit decision to the
8 public in Spanish, which CEH further alleges resulted in a deprivation of community
9 participation in the permit decision (CEH Comment 6).

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11 This Order grants Petitioner D/K's petition for review of a provision within the
12 Permit's "Special Conditions Applicable to All Permitted Units", Part V, Item 1.,
13 concerning the requirement to conduct PCB testing. This order also grants Petitioner
14 CEH's appeal regarding the requirement of sealing the walls in the loading/unloading
15 area within the secondary containment area. The Department will issue a public notice
16 that will announce this decision, establish a briefing schedule as to the PCB testing
17 requirement and state that any interested person may file a written argument. The
18 decision will also confirm that the Permittee is required to apply a coating material to
19 the containment area, including the walls in the loading/unloading area, as stated in the
20 draft Permit.

21 This Order also denies Petitioner CEH's Comments (2-3,5-6), which appeal
22 issues concerning: conditional use permit and Hazardous Waste Management Plan
23 compliance; a provision relating to the height of the berm and Department public
24 participation requirements. This denial constitutes the Department's final permit
25 decision on one provision of the permit and three extraneous issues and the denial is
26 effective on the date of mailing of this Order pursuant to California Code of Regulations,
27 title 22, section 66271.18 (c).
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II. JURISDICTION

The Department has jurisdiction over hazardous waste facility permits and the imposition of conditions on such permits pursuant to the California Health and Safety Code section 25200 et seq., and California Code of Regulations, title 22, section 66271.18.

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III. BACKGROUND

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A. FACILITY DESCRIPTION

Since 2000, the Facility has operated as a hazardous waste transporter collecting used oil and oil contaminated solid waste from offsite generators. The Facility consolidates the wastes before shipping them to a hazardous waste treatment or disposal facility. The Facility occupies two parcels of land, approximately 1.6 acres located in a developed area, zoned for light manufacturing land use in the City of Van Nuys.

The Facility consists of a loading/unloading area, one used oil storage area to store used oil in a tanker trailer, and one solid waste storage area to store solid waste contaminated with oil. The maximum capacity of the used oil storage area is 7,000 gallons in one tanker trailer and the maximum capacity of the solid waste storage area is 4.32 cubic yards in one dump trailer. The used oil storage area has a secondary containment system. The total secondary containment system capacity is 11,445 gallons. The buildings are bermed to prevent any releases from the buildings.

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B. FACILITY HISTORY

The Facility began operations in 2000 under the name American Oil Company as an exempt transfer facility. Operations at that time did not include the pumping and handling of used oil and contaminated solid waste.

C. PERMIT DECISION

In 2003, the Facility applied for a Series C Standardized Permit from the Department. The Standardized Permit would allow the facility to pump used oil from

1 smaller tanker trucks to one larger (up to 7,000 gallons) tanker trailer. The
2 Standardized Permit would also allow the Facility to consolidate the solid waste
3 contaminated with oil into one 4.32-cubic-yard dump trailer. The consolidated used oil
4 and solid waste would then be sent to the appropriate authorized used oil recycling or
5 disposal facility.

6 The Department prepared a Draft Permit and a Draft Negative Declaration in
7 compliance with the California Environmental Quality Act (CEQA, Public Resources
8 Code section 21000 et seq.) for the project. On April 7, 2006, the Department issued a
9 public notice announcing the start of a 45-day public comment period for both the Draft
10 Permit and Proposed Negative Declaration. A public hearing was held at the Panorama
11 City Public Library on May 10, 2006. The public comment period ended on May 22,
12 2006. The Department received four comment letters from Steve Wadleigh, Michael
13 Freund, David Waymire and Demenno/Kerdoon. The Department also received oral
14 comments from Michael Freund at the public hearing.

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16 On December 8, 2006, the Department issued the final Standardized Hazardous
17 Waste Facility Permit decision for the American Oil Company Facility along with a
18 Response to Comments document that included responses to comments that were
19 received during the public comment period. The final permit decision added one new
20 permit condition to the Draft Permit, a requirement to apply a chemical resistant coating
21 to the floor of the secondary containment system, as a result of public comments. The
22 draft Negative Declaration was finalized without any modifications.

23 **D. PERMIT APPEAL PROCESS**

24 Pursuant to California Code of Regulations, title 22, section 66271.18(a), the
25 period for filing a petition for review (appeal) of this final Permit decision ended on
26 January 12, 2007. Two petitions for review were received on or before that date from
27 Demmenno/Kerdoon and the Center for Environmental Health. Pursuant to California
28 Code of Regulations, title 22, sections 66271.14(b)(2) and 66271.15, as a proposed

1 new facility, the entire permit is stayed until the Department completes its review of the
2 appeal to determine which, if any, of the issues raised in the appeal meet the criteria for
3 review pursuant to California Code of Regulations, title 22, section 66271.18.

4 **IV. STANDARD OF REVIEW**

5 California Code of Regulations, title 22, section 66271.18(a), provides that any
6 person who did not file comments or participate in the public hearing on the draft permit
7 may petition the Department for review of the final permit decision, but only with respect
8 to those conditions in the final permit decision that differ from the draft permit decision.
9 In addition, those persons who filed comments, or participated in the public hearing, on
10 a draft permit decision (during the public comment period for the draft permit decision)
11 may petition the Department to review any condition of the final permit decision to the
12 extent that the issues raised in the petition for review were also raised during the public
13 comment period for the draft permit decision, including the public hearing.
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15 Section 66271.18(a) also provides, in pertinent part, that:

16 "The petition shall include a statement of the reasons supporting
17 that review, including a demonstration that any issues being raised
18 were raised during the public comment period (including any public
19 hearing) to the extent required by these regulations and when
20 appropriate, a showing that the condition in question is based on:

21 (1) a finding of fact or conclusion of law which is clearly
22 erroneous, or

23 (2) an exercise of discretion or an important policy consideration
24 which the Department should, in its discretion, review."
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26 California Code of Regulations, title 22, section 66271.12, specifies the extent to
27 which issues are required to be raised during the public comment period for a draft
28 permit decision. Specifically, this section states that "All persons, including applicants,
who believe any condition of a draft permit is inappropriate or that the Department's
tentative decision to deny an application or prepare a draft permit is inappropriate, must

1 raise all reasonably ascertainable issues and submit all reasonably available arguments
2 and factual grounds supporting their position”.

3 In this Permit decision process, the Petitioners submitted comments on the draft
4 Permit decision during the public comment period. Therefore, the Petitioners have
5 standing to petition for review of any issues raised during the public comment period for
6 the draft Permit decision, as well as any issues that pertain to changes from the draft to
7 the final Permit decision.

8 **V. FINDINGS**

9 **D/K Comment 1**

10 Petitioner D/K states that the requirement in the draft permit for PCB testing on
11 each truck-to-truck transfer of used oil is unnecessary and establishes a precedent
12 which would pose an obstacle to the routine collection and transportation of used oil in
California.

13 **Response:**

14 The Department has determined, with respect to D/K Comment 1, that the permit
15 condition that requires PCB testing on each truck-to-truck transfer of used oil specified
16 in “Special Conditions Applicable to All Permitted Units, Part V, Item I” of the Permit
17 should be further evaluated. Therefore, pursuant to the criteria set forth in California
18 Code of Regulations, title 22, section 66271.18(a) and (c), the Department is granting
19 Petitioner D/K’s petition for review of this provision of the Permit. Pursuant to California
20 Code of Regulations, title 22, section 66271.18 (c), the Department will issue a public
21 notice that will announce this grant of review as provided in California Code of
22 Regulations, title 22, section 66271.9. The public notice will set forth a briefing
23 schedule for the appeal and will state that any interested person may file a written
24 argument.
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26 **CEH Comment 2**

27 Petitioner CEH contends that the Facility is required to obtain a conditional use
28 permit from the City of Los Angeles prior to DTSC issuing a final permit.

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2 **Response:**

3 For the reasons discussed below, the Department finds that Petitioner has failed
4 to meet the burden to establish that the Department should grant a review of this issue
5 pursuant to the criteria for review set forth in California Code of Regulations, title 22,
6 section 66271.18(a), and therefore Petitioner CEH has not met the burden to establish
7 that the Department should grant a review.

8 The issues raised in this appeal comment are outside the scope of this permit
9 appeal proceeding. The Department has been informed and believes that the Facility is
10 in compliance with its Conditional Use Permit. The City of Los Angeles, Department of
11 Building and Safety has taken no steps to inform the Department that the Facility is out
12 of compliance with its Conditional Use Permit nor has the City attempted to address
13 Petitioner CEH's letter of May 18, 2006 to the City in which Petitioner alleged the
14 Facility is out of compliance.
15

16 Moreover, this permit appeal proceeding is not the proper forum in which to raise
17 a challenge to compliance with a municipal Conditional Use Permit. Finally, Petitioner
18 CEH's contention that the permit fails to require the Facility to obtain all permits required
19 by other governmental agencies is simply wrong. Such permits are required for both
20 the construction and operation of the Facility. The Industrial Service Oil Company
21 permit is distinguishable in that it had a specific permit condition, unlike this case,
22 requiring the obtaining of all necessary permits prior to the "construction of any
23 proposed hazardous waste units".

24 This denial of review constitutes the Department's final permit decision on this
25 issue and this decision shall be effective on the date of mailing of this Order denying
26 review on the merits.
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1 **CEH Comment 3**

2 Petitioner CEH argues that the Facility is required to obtain a finding of
3 consistency with the Los Angeles County Hazardous Waste Management Plan before it
4 may engage in the proposed operations.

4 **Response:**

5 For the reasons discussed below, the Department finds that Petitioner has failed
6 to meet the burden to establish that the Department should grant a review of this issue
7 pursuant to the criteria for review set forth in California Code of Regulations, title 22,
8 section 66271.18(a), and therefore Petitioner CEH has not met the burden to establish
9 that the Department should grant a review.

10 As discussed above, the requirement to obtain a finding of consistency with a
11 local land use requirement is outside the scope of this permit appeal proceeding. The
12 Department is unaware that the Facility is required to obtain a finding of consistency
13 with the Los Angeles County Hazardous Waste Management Plan. Also, the City of
14 Los Angeles, Department of Building and Safety has taken no steps to inform the
15 Department that the Facility is out of compliance nor has the City attempted to address
16 Petitioner CEH's letter of May 18, 2006 to the City in which Petitioner Alleged the
17 Facility is required to obtain a finding of consistency.
18

19 This permit appeal proceeding is not the proper forum in which to raise a
20 challenge to compliance with a local land use requirement.

21 This denial of review constitutes the Department's final permit decision on this
22 issue and shall be effective on the date of mailing of this Order denying review on the
23 merits.

24
25 **CEH Comment 4**

26 Petitioner CEH contends that the permit should be revised to require the Facility
27 to seal the walls of the containment area. During the public comment period, Petitioner
28 commented that the Title 22 regulations require that secondary containment be
"sufficiently impervious" to contain leaks and spills and that the walls of the
loading/unloading area are made of cinderblock, a known porous material. 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

1 for the walls of the containment area. Petitioner CEH seeks revision of the permit
2 condition language to specifically refer to sealing both the floor and walls of the
3 containment area.

4 **Response:**

5 The Department has determined, with respect to CEH Comment 4, that the
6 permit condition requires the application of a chemical resistant coating to both the floor
7 and the walls of the secondary containment system, "Special Conditions Applicable to
8 All Permitted Units, Part V, Item S". Unfortunately, the Department's Response to
9 Comments on this issue stated that the permit condition required application of the
10 coating material to the floor and did not specifically state that the condition applied
11 equally to the walls within the containment system. Therefore, pursuant to the criteria
12 set forth in California Code of Regulations, title 22, section 66271.18(a) and (c), the
13 Department is granting Petitioner CEH's petition for review of this provision in that the
14 Department's decision will clarify and make a specific finding that the present permit
15 condition applies also to the walls of the secondary containment system. Pursuant to
16 California Code of Regulations, title 22, section 66271.18(c), the Department will issue a
17 public notice that will announce this grant of review as provided in California Code of
18 Regulations, title 22, section 66271.9. The public notice will clarify the permit condition
19 requiring the sealing of the containment system walls and will state that any interested
20 person may file a written argument.
21

22 **CEH Comment 5**

23 Petitioner CEH states that the permit should require the Facility to install berms
24 higher than six inches in the north end of the Facility.

25 **Response:**

26 For the reasons discussed below, the Department finds that Petitioner CEH has
27 failed to meet the burden to establish that the Department should grant a review of this
28 issue pursuant to the criteria for review set forth in California Code of Regulations, title

1 22, section 66271.18(a), because Petitioner has failed to demonstrate that the permit
2 condition in question is based on a finding of fact or conclusion of law which is clearly
3 erroneous or an exercise of discretion or an important policy consideration which the
4 Department should, in its discretion, review.

5 California Code of Regulations, title 22, section 66264.175 requires the
6 secondary containment system to have sufficient capacity to contain 10% of the
7 aggregate volumes of all containers or the volume of the largest container, whichever is
8 greater. The aggregate volume of the tanker trailer and tanker truck is 11,000 gallons.
9 The largest container is the 7,000 gallon tanker trailer. The secondary containment
10 system consists of the area between the two buildings and the area inside the 13736
11 Saticoy Street warehouse building. These areas are considered to be a single
12 containment unit with a capacity of 11,445 gallons which is greater than the volume of
13 the largest container and consistent with the requirements for secondary containment in
14 California Code of Regulations, title 22, section 66264.175.

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16 This denial of review constitutes the Department's final permit decision on this
17 provision and this decision shall be effective on the date of mailing of this Order denying
18 review on the merits.

19 **CEH Comment 6**

20 Petitioner CEH contends that the project documents should have been provided
21 to the public in Spanish. Petitioner argues that because a majority of the community
22 surrounding the facility are Hispanic, the Department denied a majority of the
community information about the project in their own language.

23 **Response:**

24 For the reasons discussed below, the Department finds that Petitioner CEH has
25 failed to meet the burden to establish that the Department should grant a review of this
26 issue pursuant to the criteria for review set forth in California Code of Regulations, title
27 22, section 662781.18(a), and therefore Petitioner CEH has not met the burden to
28 establish that the Department should grant a review.

1 The Department conducted a community survey and walkthrough of the
2 neighborhood prior to the public comment period. The Department determined that
3 even though a majority of the residents are Hispanic, the majority of those encountered
4 and interacted with spoke and understood English, as well as Spanish. Therefore,
5 based on Department public participation requirements, the Department determined that
6 it was not necessary to translate any project related permit documents.

7 This denial of review constitutes the Department's final permit decision on this
8 issue and this decision shall be effective on the date of mailing of this order denying
9 review on the merits.

10 VI. ORDER

11 D/K Comment 1

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13 For the reasons set forth above, the Department has determined, with respect to
14 D/K Comment 1, that the permit condition requiring PCB testing on each truck-to-truck
15 transfer of used oil specified in "Special Conditions Applicable to all Permitted Units,
16 Part V, Item J" of the Permit raises important factual and policy considerations that
17 require further evaluation. Therefore, pursuant to the criteria set forth in California Code
18 of Regulations, title 22, section 66271.18(a) and (c), the Department is granting
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20 Petitioner's petition for review of this provision of the Permit.

21 CEH Comment 4

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23 For the reasons set forth above, the Department has determined, with respect to
24 CEH Comment 4, that the permit condition requires application of a chemical resistant
25 coating to both the floor and the walls of the secondary containment area (See, "Special
26 Conditions Applicable to All Permitted Units, Part V, Item S"). Therefore, pursuant to
27
28 the criteria set forth in California Code of Regulations, title 22, section 66271.18(a)

1 and (c), the Department is granting Petitioner's petitioner for review of this provision of
2 the Permit in that the Department's decision will clarify and specify that the permit
3 conditions applies to both the floor and the walls of the secondary containment system.
4

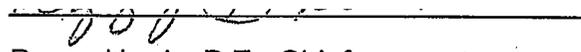
5 **CEH Comments 2-3, 5-6**

6 With respect to CEH Appeal Comments 2-3 and 5-6, the Department finds that
7 the Petitioner CEH has failed to demonstrate that the issues raised in these appeal
8 comments meet the criteria for review. Therefore, the Department is denying the
9 petition for review of CEH Appeal Comments 2-3 and 5-6. This Order constitutes the
10 Department's final decision on the merits of Petitioner CEH's appeal of these provisions.
11

12 Since a request for review of the permit is granted, pursuant to California Code of
13 Regulations, title 22, sections 66271.14(b)(2) and 66271.15, as a proposed new facility,
14 the entire permit is stayed pending final Department action.
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18 DATED: May 1, 2007

Original Signed by

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