STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:	Case Number: PAT-FY08/09-03
CHEMICAL WASTE MANAGEMENT, INC. BAKERSFIELD FACILITY 27001 ROUND MOUNTAIN ROAD BAKERSFIELD, CA	DEPARTMENT OF TOXIC SUBSTANCES CONTROL PERMITTING BRIEF ON APPEAL
	California Code of Regulations, title 22, section 66271.18
EPA ID CAT000624056	

1. INTRODUCTION

This supplemental brief is submitted on behalf of the Department of Toxic Substances Control (DTSC) Permitting in response to a Request for Supplemental Briefing seeking additional information on the below-specified issues. On June 19, 2007, DTSC issued a final post closure permit decision for Chemical Waste Management, Inc's Bakersfield facility, located at 27001 Round Mountain Road Bakersfield, California 93308. On July 19, 2007, Chemical Waste Management Inc. (CWM) filed an appeal (Petition for Review) regarding the final post closure permit decision (Permit).

2. SUPPLEMENTAL BRIEFING ISSUES

2.1 Supplemental Briefing Issue 1: Does the final permit impose a new 30 year post-closure care period for the facility? Please specify the text in the final permit, including the Part B application incorporated by reference, that requires or does not require a new 30 year post-closure care period.

On January 26, 2004, DTSC Permitting issued a Notice of Deficiency to CWM to revise their Part B application to include a 30-year cost estimate. CWM did not comply

with this requirement nor did it agree to include a 30-year cost estimate in their Part B Application.

As a result, the final permit requires CWM to provide a cost estimate and financial assurance for a 30-year period from the effective date of the permit, if CWM does not adequately demonstrate compliance with items 1 or 2 of Part V of the final permit. (Final Permit, Part V.3 & Attachment 7.) Items 1 and 2 require CWM to either submit a waste declassification notification or submit a workplan demonstrating closure by removal within a specified timeframe. CWM did not comply with Items 1 or 2 within the timeframes specified in the permit and continues to argue, which is the subject of this appeal, that it is not required to provide financial assurance for a 30-year post-closure care period.

2.2 Supplemental Briefing Issue 2: Why was the first paragraph of Part V. Special Conditions included in the draft permit' and what is the effect, if any, of the deletion of that paragraph from the final permit?

During the public notice period for the draft permit, CWM submitted several comments challenging the requirement to fund post-closure care beyond the initial 30-year post-closure period. CWM argued the Facility did not contain hazardous waste, and that funding post-closure for 30-years from the date of the permit renewal was unnecessary to protect human health or the environment. To address CWM's comments and concerns that funding post-closure care beyond the original 30 years was not necessary to protect human health or the environment, DTSC Permitting included two options, discussed above, for CWM to follow if it wanted to demonstrate to DTSC that a post-closure permit was not required for long term care of the Facility. (Final Permit, Part V.1 & V.2.)

To effectively convey these options in the final permit and to respond to CWM's comments, editorially, it made sense to remove the first paragraph of Part V of the draft permit. The effect of removing this paragraph was to convey the options numbered 1 through 3 in Part V of the final permit, which, as stated above, clearly requires in V.3.b

of the final permit submittal of financial assurance based on a DTSC-approved 30-year cost estimate. (See, Cal. Code Regs., tit. 22, § 66264.117(b)(2)(B).)

The deletion of this paragraph was in no way intended to suggest that an extension of the 30-year post-closure period would no longer be a requirement if compliance of items 1 or 2 of Part V of the final permit was unattainable, particularly in light of the plain language in Part V.3. of the final permit.

3. CONCLUSION

Based on the information stated above, and for the reasons set forth in the briefings submitted by DTSC Permitting dated April 27, 2009, the Permitting Program recommends that the Final Decision in this matter conclude as follows:

CWM Comments 3.4 & 3.7 be granted and that all other Comments be Denied.

DTSC agrees to withdraw permit conditions V.1, V.2, V.3.b & V.3.c.

DATED: April 29, 2010

//original signed by//

Nancy J. Long
Senior Staff Counsel
Department of Toxic Substances Control

PROOF OF SERVICE BY MAIL (Office Deposit)

I declare as follows:

I am over the age of 18 years, employed in the County of Sacramento, and not a party to the within action; my business address is: 1001 I Street, Sacramento, CA 95814. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the Untied States Postal Service.

On April 29, 2010 I served a copy of the following DEPARTMENT OF TOXIC SUBSTANCES CONTROL PERMITTING BRIEF ON APPEAL on the party or parties named below, in Case No. PAT-FY08/09-03 by following ordinary business practice, placing a true copy thereof enclosed in a sealed envelope, for collection and mailing with the United States Postal Service where it would be deposited for first class delivery, postage fully prepaid, in the United States Postal Service that same day in the ordinary course of business, addressed as follows:

(Via Mail and e-mail)
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on April 29, 2010, at Sacramento, California.

Leslie LeBlanc

Type or Print Name

(Signature)