

Petition for Review
Chemical Waste Management Bakersfield Facility
Hazardous Waste Facility Post-Closure Permit
DTSC Permit Number: 05-SAC-10

Introduction

Under California Code of Regulations, title 22, section 66271.18 (22 CCR § 66271.18), Chemical Waste Management, Inc. (CWM) petitions the Department of Toxic Substances Control (DTSC) to review the Hazardous Waste Facility Post-Closure Permit for the Chemical Waste Management Bakersfield Facility, Permit No. 05-SAC-10 (the Permit).

CWM intends to work with DTSC on waste declassification or "clean closure" as provided in Part V.1 and V.2 of the Permit. Accordingly, we ask that DTSC hold this Petition in abeyance while we work through these issues. In the event that we are unable to reach agreement on waste declassification or "clean closure", we will activate this appeal and supplement this initial submittal with further briefing on the contested issues.

Contested Issues

On August 31, 2006, during the public comment period, CWM submitted to DTSC comprehensive comments on the draft Permit. CWM's cover letter to its comments as well as the comments and DTSC's responses are attached as Exhibit 1. Except as noted below, the issues CWM raises in this Petition all were raised in the previously submitted comments. The contested issues pertain primarily to Permit Condition V.3. In Exhibit 1 they are included in the comments cover letter, highlighted in yellow on the DTSC response document, and supplemented in the annotated comments. The contested issues include and can be generally described and grouped as follows:

- I. Financial Assurance
 - a. DTSC's rolling renewal of the 30-year period is contrary to law.
 - b. Leachate fees should be based on criteria for non-hazardous waste, not hazardous waste.
 - c. DTSC assumes 30 years of maximum leachate generation. This is not a valid assumption. DTSC needs to consider an average based on historic volumes of leachate.
 - d. The cost estimate based on project manager time at 50 percent for 30 years is excessive.
 - e. The cost estimate based on a 20 percent contingency is excessive.
 - f. Financial assurance for cover reconstruction is not appropriate until DTSC approves the reconstruction cost estimate and/or reconstruction plan; financial assurance should not be required contemporaneously with the cost estimate.

- II. Closure Cover
 - a. The existing cover does restrict infiltration to acceptable de minimis volumes.

- b. The existing cover meets "original design specifications that meet regulatory requirements." The cover meets the regulatory requirements at the time of construction and meets the requirements today. There is no need to reconstruct the cover.
- c. The standard of "no" infiltration is technically impossible and cannot be achieved.
- d. DTSC's assumption that the cover will completely fail at some point in time is improper. DTSC's statement "it is a matter of when, not if" is a supposition not supported by sound engineering.
- e. The design standard for the closure cover is 100 years. That is not the financial assurance standard.

III. Groundwater Data

- a. DTSC disregarded important groundwater data.
- b. DTSC's assumptions that the liner will fail and that "hazardous waste" liquid as volatile organic compounds will enter into groundwater are improper. Documents cited indicate that all waste in was non-hazardous. No volatile organics have been or likely will be detected in groundwater.
- c. Permit ignores DTSC's own interpretations of "no threat."

In addition to the above contested issues that CWM raised during the public comment period, CWM also contests the deadlines imposed by Part V, Special Conditions 1 and 2 to the extent DTSC takes the position that the 60-day submittal deadlines could preclude CWM from submitting either a waste declassification notification or clean closure work plan after the end of the 60-day period. The basis for the challenge to the deadlines in these conditions is that they are inconsistent with DTSC regulations in that DTSC regulations do not impose any such deadlines on a permit holder's right to submit a waste declassification notification or to demonstrate that a facility will meet the closure removal and decontamination standards. As neither Permit Condition V.1 nor V.2 were included in the draft permit, CWM did not and could not submit comments on these conditions during the public comment period.

Finally, we note that, while the text of the Permit correctly identifies CWM as the owner and operator of the facility (Part II 1 and 2), the cover page of the Permit incorrectly identifies Waste Management, Inc. as the owner and operator.

Statement of Reasons

As discussed in the yellow highlighted sections of Exhibit 1, the Permit generally and Permit Condition V.3 specifically is based on findings of fact and conclusions of law that are clearly erroneous. The Petition raises important policy considerations that DTSC should review, in particular the apparent policy of continually re-starting the statutorily mandated 30-year period for post-closure care when DTSC renews a hazardous waste facility post-closure permit.

If CWM seeks to have this Petition for Review activated as discussed above, we will submit further briefing on the statement of reasons supporting this appeal.

Conclusion

For the reasons discussed above, and to preserve its right to appeal the Permit, CWM is submitting this Petition for Review. However, CWM will work with DTSC on either the waste declassification or "clean closure" options provided in the Permit, both of which likely would largely obviate the need for this appeal. We understand that DTSC will hold this Petition for Review in abeyance while these options are considered. If we are unable to resolve the matter via these options, the appeal can be activated at the appropriate time.