

1 STATE OF CALIFORNIA
2 ENVIRONMENTAL PROTECTION AGENCY
3 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

4 In the Matter of:) Docket No.: PAT-FY08/09-04
5 EVERGREEN OIL, INC. - DAVIS)
6 44561 Road 30-B) ORDER TO GRANT REVIEW, TO
7 Davis, California) RESERVE ISSUES, AND TO SET
8 EPA ID. No.: CAD 982 446 874) BRIEFING PERIOD
9) California Code of Regulations,
10) Title 22, Section 66271.18(c)
11)
12)

12 **I. INTRODUCTION**

13 On October 24, 2008, the Department of Toxic Substances Control (Department
14 or DTSC), Permit Renewal Team, issued a Standardized Hazardous Waste Facility
15 Permit, Series B (Permit), to Evergreen Oil, Inc., for its Davis facility located at 44561
16 Road 30-B, Davis, California (herein referred to as "Evergreen Davis" or "Facility"). On
17 December 24, 2008, Mr. Philip Chandler (Petitioner) filed a Petition for Review (Appeal)
18 of the Evergreen Davis permit decision.

19 Pursuant to California Code of Regulations, title 22, section 66271.14(b)(2), the
20 permit decision has been stayed pending determination whether the appeal meets the
21 criteria for granting a review. In the interim, Evergreen Davis continues to be authorized
22 to operate the Facility under the terms and conditions of its Hazardous Waste Facility
23 Permit issued with an effective date of December 30, 1997.

24 **II. JURISDICTION**

25 The Department has jurisdiction over hazardous waste facility permits and the
26 imposition of conditions on such permits pursuant to the California Health and Safety
27 Code, section 25200 et seq., and California Code of Regulations, title 22, section
28 66270.30.

1 **III. BACKGROUND**

2 **A. FACILITY DESCRIPTION:**

3 The Facility is described in the fact sheet, dated August 2008, that was
4 prepared for the draft permit decision as follows:

5 Evergreen Oil is a permitted hazardous waste storage facility, within a
6 larger 33-acre area of land owned and operated by KC Farms. The facility
7 occupies about 3,700 square feet of land leased from KC Farms. KC
8 Farms uses the surrounding land for agricultural purposes. The facility
9 consists of three hazardous waste management units (described below).
10 The facility is unmanned and is locked at all time (sic)... Tests are
11 performed on the waste by Evergreen Oil personnel to determine if the
12 waste meets the screening criteria in the permit. If the waste meets the
13 criteria, then the waste is unloaded into the appropriate storage unit. If the
14 waste does not meet the criteria, the waste is transported directly to an
15 authorized hazardous waste treatment or disposal facility.

12 **Hazardous Waste Management Units Authorized in the Permit**

13 **Unit 1 - Tank Storage Unit in Containment Area #1**

14 The Tank Storage Unit in Containment Area #1 has four hazardous waste
15 storage tanks. Each storage tanks (sic) has a capacity of 12,125 gallons
16 and the total maximum permitted capacity of this Unit is 48,500 gallons.
17 Used oil, waste antifreeze, and oily water are stored in these tanks.

18 **Unit 2 - Drum Storage Unit in Containment Area #2**

19 The Drum Storage Unit in Containment Area #2 has a total maximum
20 permitted capacity of 550 gallons. Drums of used oil, waste antifreeze,
21 oily water, solids contaminated with oil, and contaminated empty
22 containers are stored in this area.

23 **Unit 3 - Truck-to-Truck Transfer, Loading, and Unloading Area**

24 The Truck-to-Truck Transfer, Loading, and Unloading Area have (sic) a
25 total maximum permitted capacity of 14,400 gallons. Used oil, waste
26 antifreeze, and oily water are loaded and unloaded in this area to and from
27 the Tank Storage Unit. Waste may also be transferred between tanker
28 trucks.

25 **B. PERMIT DECISION**

26 In December, 2006, Evergreen Oil, Inc. submitted a Standardized Permit
27 Renewal Application for the Evergreen Davis Facility. The Permit Renewal Team
28 reviewed the application and prepared a draft Permit and a draft Notice of Exemption in

1 compliance with the California Environmental Quality Act (CEQA, Public Resources
2 Code section 21000 et seq.) for the project.

3 On August 1, 2008, the Permit Renewal Team issued a public notice announcing
4 the start of a public comment period for the draft permit decision. The public comment
5 period was set for August 1, 2008, to September 15, 2008, at 5:00 p.m. The public
6 notice and a fact sheet were mailed to approximately 380 addresses on the Facility
7 mailing list. In addition, the public notice was published in the Davis Enterprise
8 newspaper, and an announcement was aired on KGO News Talk 810 AM radio, on
9 August 1, 2008.

10 The administrative record for the draft permit decision was available for review at
11 the DTSC Berkeley Office located at 700 Heinz Avenue, Berkeley, California. In
12 addition, pertinent project documents including the draft Permit and the draft CEQA
13 Notice of Exemption were available for review at the Mary L. Stephens Branch Library
14 located at 315 E 14th Street in Davis, California, and online on the DTSC website at the
15 following address:

16 http://www.dtsc.ca.gov/HazardousWaste/Projects/Evergreen_Oil_Inc_Davis.cfm

17 The Permit Renewal Team received comments on the draft permit from
18 Mr. Olin Woods, Dr. F.P. Brady, Mr. Bart Miller, Mr. Stephen Douglas (representing
19 Evergreen Oil, Inc.) and Mr. Philip Chandler (Petitioner). Mr. Chandler's comments
20 were submitted via e-mail with date and time stamp of "9/15/2008 7:49 PM." The e-mail
21 stated, in part, "Please bear in mind that the public comment period is 'not less than 45
22 days' and COB today is less than 45 days."¹

23 By e-mail dated September 25, 2008, the Permit Renewal Team Project
24 Manager for the Facility, Mr. Alfred Wong, replied to Mr. Chandler as follows:

25
26
27
28 ¹ See e-mail dated 9/15/2008 from "phil chandler" <phillipbchandler@earthlink.net> to "awong"
<awong@dtsc.ca.gov>

1 Dear Mr. Chandler,

2 Thank you for your comments via email. Unfortunately, your comments
3 were received after the close of the public comment period. The public
4 notice and the fact sheet clearly stated that all email must be received by
5 September 15, 2008 no later than 5 PM which is the close of business
6 day. Your email comments were received at 7:45 PM after the comment
7 period had closed. Therefore, your comments will not be entered into the
8 public record and no response will be issued.

9 Please note that the public comment period started on August 1, 2008 and
10 ended on September 15, 2008. This provided the public with 46 days to
11 comment on the draft permit, which is longer than the 45 days required by
12 the regulations.

13 If you have any questions, please contact me via email or at
14 510-540-3946.

15 Sincerely,

16 Alfred Wong

17 A copy of the comment letter submitted by Petitioner on the draft permit decision
18 is attached hereto (Attachment 1) and incorporated by reference.

19 On October 24, 2008, the Permit Renewal Team issued a Notice of Final
20 Hazardous Waste Facility Permit Decision and the final Permit for the Evergreen Davis
21 Facility. The Notice identified information repositories for the final permit decision
22 documents as follows:

23 A copy of the complete administrative record for this permit decision is
24 available for review at DTSC's Berkeley office at:

25 Department of Toxic Substances Control
26 700 Heinz Avenue, Suite 200
27 Berkeley, California 94710
28 Contact: Ms. Lule Varela at (510) 540-3800 for an appointment

Copies of the Final Permit, the RTC² document, the DTSC memorandum
listing the changes made to the draft Permit, a redline/strikeout version of

² Response to Comments.

1 the Permit that shows changes from the Draft Permit to the Final Permit,
2 and the CEQA Notice of Exemption are also available for review at:

3 Mary L. Stephens Branch Library
4 315 E 14th Street
5 Davis, California 95616
6 Call (530) 757-5593

7 These documents are also available at DTSC's website: www.dtsc.ca.gov.

8 **C. PERMIT APPEAL PROCESS**

9 Pursuant to California Code of Regulations, title 22, section 66271.18(a), the
10 period for filing a petition for review (appeal) of the final permit decision for Evergreen
11 Davis ended on December 24, 2008, as stated in the Notice. Mr. Philip Chandler filed a
12 Petition for Review on December 24, 2008. A copy of the Petition is attached hereto
13 (Attachment 2) and incorporated by reference.

14 The final permit decision has been stayed in full pursuant to California Code of
15 Regulations, title 22, section 66271.14(b)(2), until the Permit Appeals Officer completes
16 review of the appeal and determines which, if any, of the issues raised in the appeal
17 meet the criteria set forth in California Code of Regulations, title 22, section 66271.18,
18 for granting review. On January 13, 2009, Evergreen Oil, Inc., the Permit Renewal
19 Team, and the Petitioner were notified of the stay.

20 **IV. STANDARD OF REVIEW**

21 California Code of Regulations, title 22, section 66271.18(a), provides that any
22 person who filed comments, or participated in the public hearing on the draft Permit
23 during the public comment period, may petition the Department to review any condition
24 of the final permit decision to the extent that the issues raised in the petition for review
25 were also raised during the public comment period for the draft permit decision,
26 including the public hearing. Any person who did not file comments or participate in the
27 public hearing on the draft Permit may petition the Department for review of the final
28 permit decision, but only with respect to those conditions in the final permit decision that
differ from the draft Permit.

1 California Code of Regulations, title 22, section 66271.12, specifies the extent to
2 which issues are required to be raised during the public comment period for a draft
3 permit decision:

4 All persons, including applicants, who believe any condition of a draft
5 permit is inappropriate or that the Department's tentative decision to deny
6 an application or prepare a draft permit is inappropriate, must raise all
7 reasonably ascertainable issues and submit all reasonably available
8 arguments and factual grounds supporting their position.

8 California Code of Regulations, title 22, sections 66271.18(a)(1) and (2) also
9 provide, in pertinent part, that:

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

- 14 (a) a finding of fact or conclusion of law which is clearly erroneous, or
15 (b) an exercise of discretion or an important policy consideration which
16 the Department should, in its discretion, review.

17 V. DISCUSSION AND FINDINGS

18 Appeal Comments 1 and 2 relate to the length of the public comment period and
19 to DTSC's alleged failure to respond to comments submitted within the public comment
20 period, respectively. Petitioner's appeal comment is reproduced from the petition as
21 follows:

22 1. It is noted that DTSC has once again ignored the "...at least 45
23 days for public comment." The period required by California Code of
24 Regulations, title 22, section 66271.9(b)(1). The public comment period
25 was arbitrarily determined by DTSC to end at 5:00 pm on September 15,
26 2008. It started on August 1, 2008. The regulations do not require just
27 44 2/3 days but require **no less** than 45 days. As DTSC so frequently
28 states in its own documents, days are assumed to mean calendar days
not business days unless other (sic) specified in its regulations. DTSC's
public comment notice has therefore misrepresented the time allowed for
public comment. Therefore, I am appealing all provisions in the final
permit and none of them should be placed in force until after the decision

1 on this appeal is made. The remedy being sought is re-notice and
2 response to my comments that were submitted within the regulatory 45-
3 day period. (emphasis in original)

4 2. Because DTSC refused to respond to public comments made
5 during the legal public comment period, all provisions in the final permit
6 are being appealed and none of them should be placed in force after the
7 decision on this appeal is made. (sic)

8 The administrative record for the draft Permit indicates that the Notice of Public
9 Comment Period for the draft Permit was served via mailing and publication in the
10 newspaper on or about August 1, 2008. Thus the method of noticing appears to comply
11 with California Code of Regulations, section 66271.9(c)(1)(D).

12 The public notice and the fact sheet stated that all comments submitted via
13 postal mail must be postmarked by, and all comments submitted via electronic mail
14 must be received by, 5.00 p.m. on September 15, 2008. Petitioner submitted comments
15 via electronic mail at 7:49 p.m. on September 15, 2008. The Permit Renewal Team's
16 response to Petitioner rejecting the submission as untimely is noted above.

17 Petitioner's standing to raise issues on appeal requires a demonstration that the
18 issues proffered on appeal were raised during the public comment period and that
19 Petitioner filed comments or participated in a public hearing on the draft Permit
20 (California Code of Regulations, title 22, section 66271.18(a)). The Petitioner lists 15
21 numbered appeal comments. As previously stated, Comments 1 and 2 relate to the
22 length of the public comment period and to DTSC's alleged failure to respond to
23 comments submitted within the public comment period, respectively. Comments 3
24 through 15 address technical and operational issues inherent in the final permit
25 decision.

26 Although the administrative record contains Petitioner's letter dated
27 August 15, 2008, the Response to Comments document in the administrative record
28 does not contain responses to the matters raised in that letter. Mr. Wong's e-mail
asserting that the letter is untimely explains the omission, while underscoring the

1 remaining portions of Mr. Chandler's petition are reserved for further disposition pending
2 briefing on the comments that have been granted review.

3 Pursuant to California Code of Regulations, title 22, section 66271.18(c), the
4 Department will establish a briefing schedule for this appeal, during which time
5 interested parties may file written arguments pertaining to the Appeal Comments for
6 which the review has been granted. The written arguments should include all
7 reasonably available arguments and factual grounds supporting their position, including
8 all supporting material. To assure complete consideration, all supporting materials
9 should be included in full and may not be incorporated by reference, unless they are
10 already part of the administrative record, or consist of State or Federal statutes and
11 regulations, Department or USEPA documents of general applicability, or other
12 generally available reference materials. Additionally, the briefing documents must
13 provide facts showing the technical, regulatory or statutory basis for the requested
14 outcome, and must be accompanied by the data and other reference material that is
15 used to support the argument, including citations to the administrative record.

16 The briefing schedule and this Order will be announced in a public notice
17 pursuant to California Code of Regulations, title 22, section 66271.18(c). All arguments
18 pertaining to the Appeal Comments that have been granted review must be filed in
19 writing, received by the date specified in the public notice, and addressed as follows:

20 Mr. Mohinder S. Sandhu, P.E.
21 Permit Appeals Officer
22 Department of Toxic Substances Control
23 8800 Cal Center Drive
24 Sacramento, California 95826

24 An additional electronic copy of the briefing arguments may be e-mailed to
25 appeals@dtsc.ca.gov.

26 Pursuant to California Code of Regulations, title 22, section 66271.15, the
27 contested permit conditions and uncontested conditions which are not severable from
28 the contested permit conditions are stayed pending completion of the briefing period.

1 The Appeal Comments which have been reserved for further disposition broadly affect
2 conditions of the Permit that are not severable from conditions that are not directly
3 contested. Therefore, all provisions of the permit decision issued for this Facility on
4 October 24, 2008, and the Permit itself, are hereby stayed pending further order of the
5 Permit Appeals Officer.

6
7 Dated: March 27, 2009

8 //original signed by//

9 _____
10 Mohinder S. Sandhu, P.E.
11 Permit Appeals Officer
12 Department of Toxic Substances Control

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Attachments (2)

ATTACHMENT 1

Evergreen Davis Order to Set Briefing Period

March 27, 2009

From: "phil chandler" <philipbchandler@earthlink.net>
To: "awong" <awong@dtsc.ca.gov>
CC: "krhodes1" <krhodes1@dtsc.ca.gov>, "jgarcia1" <jgarcia1@dtsc.ca.gov>, "m...
Date: 9/15/2008 7:49 PM
Subject: EVERGREEN DAVIS DRFAT PERMIT
Attachments: Evergreen Davis 9 15 2008.doc

The attached represent my public comments on the subject draft permit. Please bear in mind that the public comment period is "not less than 45 days" and COB today is less than 45 days. Phil Chandler

phil chandler
philipbchandler@earthlink.net
Why Wait? Move to EarthLink.

August 15, 2008

Mr. Alfred Wong
Project Manager
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, California 94710

COMMENTS ON DRAFT HAZARDOUS WASTE PERMIT RENEWAL,
EVERGREEN OIL, INC. - DAVIS FACILITY, DAVIS,
CALIFORNIA

Dear Mr. Wong:

The Department of Toxic Substances Control (DTSC) has once again failed to provide for adequate environmental protection in one of its hazardous waste management permits and has also again provided only part of the permit for public review. It is also noted that DTSC once again shaves the "...at least 45 days for public comment." Period required by California Code of Regulations, title 22, section 66271.9(b)(1). The regulations do not require 44 2/3 days but 45 days. As DTSC so frequently states in its own documents, days are assumed to mean calendar days not business days. DTSC's public notice has mis-represented the time allowed for public comment again and again. In this instance, I request that DTSC re-notice the draft permit and include on-line the entire document that is intended to constitute the permit. The following represent some of my concerns:

- X The permit is described as consisting of Attachment A, which is 27 pages long, a standardized permit application, dated December 2006, which is "... hereby made part of this permit by reference." Only "Attachment A" is provided to the public as part of the review documents. This is an inappropriate and deceptive practice on the part of DTSC.

Although DTSC touts transparency, it consistently fails to deliver as part of its permitting practice. It is requested that this draft permit be re-noticed and all parts of the permit provided on-line, as would be reasonable and appropriate for a "transparent" agency. Please explain why the application is dated only as December 2006? What is the exact date of submittal and why wasn't that used?

- X Please explain the regulations that distinguish between the Owner of Real Property and the Owner of the Facility. Aren't the Owners, as defined in the regulations, those who own the land and structures of the Facility? Who is responsible for Closure and Corrective Action in the event that Evergreen Oil, Inc. files for bankruptcy---as many DTSC facilities have done? How does this careful and deceptive parsing of ownership description affect all of the regulatory obligations accruing to ownership? Is the Chew Family Trust responsible for Closure and Corrective Action if Evergreen Oil Inc. is bankrupt? The existing regulations do not describe or define "Owner of Real Property" therefore it appears that DTSC is creating an underground regulation to satisfy the Facility and true Owner. Please explain why, DTSC's actions in this permit should not be considered an underground regulation and treated accordingly.

- X Part III (2)(g) Please explain the difference between Operation Plan and Permit Application. Please explain where in the regulations the term Operation Plan is defined and used. Is the use of this term in an operative fashion another underground regulation practiced by DTSC?

- X California Code of Regulations, title 22, requires that corrective action be specified in the permit. No schedule of compliance provided in the draft permit and there is no evidence that any form of corrective action mechanism, such as a Corrective Consent Agreement, exists. DTSC is clearly not satisfying the corrective requirements in the

applicable statutes for issuance of this permit.

- X Please explain whether corrective action is fence-line to fence-line on the entire Parcel occupied by the hazardous waste management units. It would appear that situating a hazardous waste management unit on a contiguous parcel makes that parcel the Facility and subjects the entire parcel to corrective action requirements. Please explain what statutes and regulations provide for in this situation.
- X Has corrective action financial assurance been established for the facility in accordance with the intent of Health and Safety Code (H&SC) §25200.10(b)? It is widely known that DTSC fails to comply with this statute, allowing permit applicants to defer the establishment of assurances of financial responsibility for corrective action at facilities. The usual means of deferral is through an enforcement order such as is cited in this draft permit. H&SC requires that, *When corrective action cannot be completed prior to issuance of the permit, the permit shall contain schedules of compliance for corrective action and assurances of financial responsibility for completing the corrective action.* [H&SC §25200.10(b)] Title 22 states *That the permit or order [emphasis added] will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.* [Title 22 CCR §66264.101(b)] Currently DTSC fails to require assurance of corrective action financial responsibility in the permits that it issues. Has it failed again to require such *assurances of financial responsibility* for corrective action?
- X Section III.3 - DTSC claims that its decision is exempt from the requirements of CEQA. This section of the Permit is inaccurate. DTSC has failed to provide for corrective action financial assurance and hence there are substantial potential

environmental impacts. Delay or permanent inability to perform corrective action activities is clearly a significant environmental impact.

- X Section IV Unit 1 - A bucket or drip pan is not a substitute for secondary containment. Please explain how such a simple-minded concept keeps being embedded in DTSC permits. Please explain how buckets become best management practice.
- X Section IV - What were the dates of the previous tank integrity assessment certifications? Where is a compliance schedule for this Facility?
- X Section IV Units 1 and 2- What were the construction standards applicable for the various secondary containments at this Facility?
- X Section IV Unit 3- According to Figure 2 "Facility Site Plan", it appears that Unit #3 is not within the fenced and controlled access area. If this unit is a hazardous waste management unit, please explain how the physical layout complies with regulatory requirements for control. There is no explanation of how waste that may accumulate in the sump is to be taken care of nor any clean-up procedures for the unit between transfers to assure that access to the unfenced hazardous waste management unit does not result in potential exposure to the humans or biota.
- X Section IV Unit 2 - Please explain why the Permittee is not allowed to stack containers as many other facilities have been allowed to do? Is this another change in DTSC policy?
- X Does prior to accepting mean prior to the used oil being placed into the tanker or does the tanker wait in the unfenced hazardous waste management Unit 3 while the tests are being performed? Is the GWPW being used to satisfy permittee determination? Who certifies that the sample is representative---the Generator or the Permittee? What do you mean by repeating the test every 365

days? Does this mean that for any generator analysis needs to be done only on that basis? Please explain how this is protective of human health and the environment. What constitutes acceptance? How long would such a wait be? Would there be personnel around the truck providing security? Isn't the presence of the tanker truck in the hazardous waste management unit acceptance? If not, why not?

- X Why is the Permittee allowed to accept used oil with 1000 ppm of total halogens? Halogens vary in toxicity, shouldn't this be factored in to the allowable amount, if any?
- X Why are PCBs in waste oil exempted from the "fingerprinting" on incoming shipments but analyzed on outgoing loads? This appears to give the Facility the ability to dilute PCBs in one truckload by mixing with non-PCB containing truckloads. Does such dilution constitute treatment? Is this why DTSC is apparently turning a blind eye to incoming PCBs?
- X Please explain in plain language the concept of rebuttable presumption and explain what statutes control its application in this instance. It seems like this condition recites the regulations? Is this so?
- X How does DTSC intend to determine intentional mixing?
- X Please explain the 2 PPM limitation on PCBs in oil from each storage tank?
- X Why is a second sample taken if the first indicates PCBs in excess of 2 PPM?
- X Why is there a 5 PPM limit on the retained sample but a 2 PPM limitation on the tank being emptied?
- X It appears that additional oil can be added to

dilute a tank after an analysis and the only requirement is that another analysis be made. Is this so?

- X Please explain why the special conditions are so detailed. Could it be that the Permittee's application---especially the waste analysis plan--lacks all of this information? If so, please explain why another notice of deficiency was not issued and an adequate application obtained? Does this have anything to do with the permit renewal team's requirement to speed up processing of applications?
- X Given the issue of corrective action and past releases, why are the testing data only being retained for 3 years?
- X Please indicate whether or not environmental monitoring is on-going at the facility. If it is, why is it not included in this Permit?
- X DTSC should specify what corrective measures are acceptable with respect to fixing cracks, gaps, or tears in the containments.
- X Where will the Permittee collect and store all rainwater and washwater from the authorized units? How will it be handled during determinations? Will it be considered a different waste stream? Please explain what manage accordingly means. How does such storage affect maximum capacity limitations? How can the facility be kept locked if hazardous waste management unit #3 is not fenced and gated?
- X Explain why the Permittee has not already coated the secondary containment? Have they been issued a violation for this in the past?

DTSC needs to re-notice this permit and include the entire permit on its website for public review not just the "Attachment A". If you have questions regarding the foregoing comments please call me at (310) 455-1962.

Mr. Alfred Wong
January 23, 2009
Page 7

Sincerely,

Philip B. Chandler
2615 Marquette Dr.
Topanga, CA 90290

ATTACHMENT 2

Evergreen Davis Order to Set Briefing Period

March 27, 2009

December 24, 2008

Mr. Mohinder Sandhu, P.E.
Permit Appeals Officer
Department of Toxic Substances
Control
8800 Cal Center Drive
Sacramento, California 95826-3200

**ADMINISTRATIVE APPEAL OF DECISION
ON APPROVAL OF FINAL HAZARDOUS
WASTE FACILITY PERMIT RENEWAL FOR
EVERGREEN OIL INC., DAVIS FACILITY,
DAVIS CALIFORNIA 95616**

Dear Mr. Sandhu:

This is a petition for review of the October 24, 2008, decision for approval of an operating permit for the Evergreen Oil Inc. hazardous waste management facility in Davis, California.

1. It is noted that DTSC has once again ignored the "...at least 45 days for public comment." The period required by California Code of Regulations, title 22, section 66271.9(b)(1). The public comment period was arbitrarily determined by DTSC to end at 5:00 P.M. The regulations do not require just 44 2/3 days but require no less than 45 days. As DTSC so frequently states in its own documents, days are assumed to mean calendar days not business days unless other specified in its regulations. DTSC's public notice has therefore mis-represented the time allowed for public comment. Therefore, all provisions in the final permit are being appealed and none of them should be placed in force until after the decision on this appeal is made. The remedy being sought is re-notice and response to my comments that were submitted within the regulatory 45-day period.

2. Because DTSC refused to respond to public comments made during the legal public comment period, all provisions in the final permit are being appealed and none of them should be placed in force after the decision on this appeal is made.
3. The permit is described as consisting of Attachment A, which is pages long, a standardized permit application, dated December 2006, which is "... hereby made part of this permit by reference." Only "Attachment A" is provided to the public as part of the review documents. This is an inappropriate and deceptive practice on the part of DTSC. Although DTSC touts transparency, it consistently fails to deliver as part of its permitting practice. This permit notice failed to follow DTSC's expressed policies.
4. What regulations that distinguish between the Owner of Real Property and the Owner of the Facility? Aren't the Owners, as defined in the regulations, those who own the land and structures of the Facility? Who is responsible for Closure and Corrective Action in the event that Evergreen Oil, Inc. files for bankruptcy---as many DTSC facilities have done? How does this careful and deceptive parsing of ownership description affect all of the regulatory obligations accruing to ownership? Is the Chew Family Trust responsible for Closure and Corrective Action if Evergreen Oil Inc. is bankrupt? The existing regulations do not describe or define "Owner of Real Property" therefore it appears that DTSC is creating an underground regulation to satisfy the Facility and true Owner. Please explain why, DTSC's actions in this permit should not be considered an underground regulation and treated accordingly. The failure to identify the "owners" in regulation-consistent language and to identify their responsibilities as to corrective action is hereby appealed.
5. The Permit does not explain the difference between Operation Plan and Permit Application. DTSC appears to use the terms interchangeably without any regulatory definition for the term Operation Plan. The regulations do not provide for the creation of terms of art. The use of this term in

an operative fashion is hereby appealed.

6. I hereby appeal the Corrective Action section of the Permit because California Code of Regulations, title 22, requires that corrective action be specified in the permit. No schedule of compliance provided in the draft permit and there is no evidence that any form of corrective action mechanism, such as a Corrective Consent Agreement, exists. DTSC is clearly not satisfying the corrective requirements in the applicable statutes and regulations for issuance of this permit.

7. I hereby appeal the Corrective Action section of the Permit because the AFR for corrective action is required by statute to be included in permits issued by DTSC. Why isn't this addressed? Why isn't the AFR for corrective action addressed in the corrective section of the permit? By its silence on corrective action AFR, it is believed that this permit is inconsistent with and contradictory to the intent of H&SC §25200.10(b). This section of the H&SC requires that, *When corrective action cannot be completed prior to issuance of the permit, the permit shall contain schedules of compliance for corrective action and assurances of financial responsibility for completing the corrective action.* [H&SC §25200.10(b)] Title 22 states *That the permit or order [emphasis added] will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.* [Title 22 CCR §66264.101(b)] I perusing the consent agreement, it is clear that DTSC has not completely addressed corrective action, since it only finished the RCRA Facility Assessment (RFA) in May 2004, [for a facility that had operated over 20 years] just before issuance of the draft permit but has failed to require corrective action AFR in the permit. Moreover, there appears to be no schedule of compliance for completion of corrective action in the permit proper. Note, that no reference is made in the Permit as to whether DTSC has determined that corrective action is complete---either through conclusions of an RFA, investigative work under an

RFI, or through implementation of a remedy selected. DTSC is attempting to end run its obligation to make a clear administrative decision---subject to public comment and CEQA--- on the issue of corrective action.

8. I petition that the corrective action section of the Permit is re-written to be specific as to what constitutes the "Facility" for purposes of corrective action. Specifically, despite Evergreen only using a fraction of the involved parcel, corrective action needs to be applicable across all of the property, not just that portion carved out for use by Evergreen.
9. I petition that Section III.3 be revised. DTSC claims that its decision is exempt from the requirements of CEQA. This section of the Permit is inaccurate. DTSC has failed to provide for corrective action financial assurance and hence there are substantial potential environmental impacts. Delay or permanent inability to perform corrective action activities is clearly a significant environmental impact.
10. I petition that specific construction standards for the secondary containment be included as permit conditions in Section IV. Use of a bucket or drip pan is not a substitute for the regulatory requirement for secondary containment.
11. I petition that a special condition be added to Section IV of the Permit to require that Unit #3 be fenced as required by the regulations to control the unit and that conditions be added as to removal of wastes from the sump.
12. I petition that a condition be added to Section IV that requires any tanker awaiting unloading to be within a fenced area as well as a condition to acknowledge that if the tanker is placed in Unit #3, that that placement constitutes acceptance of the waste.
13. I petition that a condition be added to Section IV to explain specifically how intentional mixing

will be recognized.

14. I petition that Section IV be modified to eliminate the exemption for testing for PCBs. The existing condition "legalizes" dilution of PCB containing loads with non-PCB containing truckloads.
15. I petition that a condition be added to Section IV to specify the repairs necessary to maintain the secondary containment. Specifically, something more secure than a simple bead of caulk or an even thinner coating must be provided to address any through-going cracks. DTSC must address how such cracks will be recognized and how they will be fixed.

I petition that this permit be re-noticed and all comments received during a true 45-day comment period be responded to. I further petition that the permittee required to have in place corrective action AFR and include a compliance schedule in the permit before its re-issuance.

If you have questions regarding the foregoing comments please call me at (310) 455-1962.

Sincerely,

Philip Chandler
2615 Marquette
Topanga, CA 90290