

1 STATE OF CALIFORNIA

2 ENVIRONMENTAL PROTECTION AGENCY

3 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

4 In the Matter of:

5 EVERGREEN OIL, INC. - DAVIS
6 44561 Road 30-B
7 Davis, California 95616

8 EPA ID. NO. CAD 982 446 874
9

Docket Number: PAT-FY08/09-04

FINAL APPEAL DECISION
AND ORDER

California Code of Regulations,
Title 22, Section 66271.18

10
11 **I. INTRODUCTION**

12 On October 24, 2008, the Permit Renewal Team of the Department of Toxic
13 Substances Control (DTSC) issued a Standardized Hazardous Waste Facility Permit,
14 Series C (Permit) to Evergreen Oil, Inc. – Davis (Evergreen Davis) hazardous waste
15 storage and transfer facility located at 44561 Road 30-B, Davis, California (Facility). On
16 December 24, 2008, Mr. Philip Chandler (Petitioner) filed a Petition for Review (Appeal)
17 of the Evergreen Oil, Inc. - Davis permit decision.

18 On March 27, 2009, the Permit Appeals Officer of the Department of Toxic
19 Substances Control (Department) issued an "Order to Grant Review, to Reserve Issues,
20 and to Set Briefing Period" (Docket No.: PAT-FY08/09-04), granting review of
21 Petitioner's Appeal Comments 1 and 2. The Department reserved the decision on
22 Appeal Comments 3 through 15 pending the outcome of Appeal Comments 1 and 2.

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24 **II. JURISDICTION**

25 The Department of Toxic Substances Control has jurisdiction over hazardous
26 waste facility permits and the imposition of conditions on such permits pursuant to the
27 California Health and Safety Code section 25200 et seq., and California Code of
28 Regulations, title 22, section 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
6 Evergreen Oil is a permitted hazardous waste storage facility, within a
7 larger 33-acre area of land owned and operated by KC Farms. The facility
8 occupies about 3,700 square feet of land leased from KC Farms. KC
9 Farms uses the surrounding land for agricultural purposes. The facility
10 consists of three hazardous waste management units (described below).
11 The facility is unmanned and is locked at all time (sic) ... Tests are
12 performed on the waste by Evergreen Oil personnel to determine if the
13 waste meets the screening criteria in the permit. If the waste meets the
14 criteria, then the waste is unloaded into the appropriate storage unit. If the
15 waste does not meet the criteria, the waste is transported directly to an
16 authorized hazardous waste treatment or disposal facility.

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

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

15 The Tank Storage Unit in Containment Area #1 has four hazardous waste
16 storage tanks. Each storage tanks (sic) has a capacity of 12,125 gallons
17 and the total maximum permitted capacity of this Unit is 48,500 gallons.
18 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, oily
21 water, solids contaminated with oil, and contaminated empty containers
22 are stored in this area.

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

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

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1 **B. PERMIT DECISION**

2 In December, 2006, Evergreen Oil, Inc. submitted a Standardized Permit
3 Renewal Application for the Evergreen Davis Facility. DTSC reviewed the application
4 and prepared a draft Permit and a draft Notice of Exemption in compliance with the
5 California Environmental Quality Act (CEQA, Public Resources Code section 21000 et
6 seq.) for the project.

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

13 The administrative record for the draft permit decision was available for review at
14 the DTSC Berkeley Office located at 700 Heinz Avenue, Berkeley, California. In
15 addition, pertinent project documents including the draft Permit and the draft CEQA
16 Notice of Exemption were available for review at the Mary L. Stephens Branch Library
17 located at 315 E 14th Street in Davis, California, and online on the DTSC website at
18 <http://www.dtsc.ca.gov/> and at <http://www.envirostor.dtsc.ca.gov/public/>

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

25 By e-mail dated September 25, 2008, DTSC's Project Manager for the Facility,
26 Mr. Alfred Wong, replied to Mr. Chandler as follows:

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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 on the draft permit decision submitted by Petitioner
18 is attached hereto as Attachment 1, and is incorporated by reference.

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

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

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

28 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 an Appeal of the final permit decision for Evergreen Davis ended on
11 December 24, 2008, as stated in the Notice. Mr. Philip Chandler filed an Appeal on
12 December 24, 2008. A copy of the Petition is attached hereto as Attachment 2, and is
13 incorporated by reference.

14 Pursuant to California Code of Regulations, title 22, section 66271.18(c), the
15 Permit Appeals Officer issued the "Order to Grant Review, to Reserve Issues, and to
16 Set Briefing Period" (Docket No.: PAT-FY08/09-04), on March 27, 2009, granting review
17 for 2 of 15 appeal comments and staying the permit. A public notice was issued
18 establishing a briefing schedule concerning the appeal comments granted review.
19 Interested persons were invited to submit written arguments pertaining to the issues that
20 were granted review and, if necessary, to request an Informal Appeals Conference to
21 present their arguments orally. The appeal briefing period began on April 7, 2009, and
22 ended on May 18, 2009. No briefing arguments (briefs) were received.

23 **IV. STANDARD OF REVIEW**

24 California Code of Regulations, title 22, section 66271.18(a), provides that any
25 person who filed comments, or participated in the public hearing on the draft Permit
26 during the public comment period, may petition the Department to review any condition
27 of the final permit decision to the extent that the issues raised in the petition for review
28 were also raised during the public comment period for the draft permit decision,

1 including the public hearing. Any person who did not file comments or participate in the
2 public hearing on the draft Permit may petition the Department for review of the final
3 permit decision, but only with respect to those conditions in the final permit decision that
4 differ from the draft Permit.

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

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

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

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

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

21 V. DISCUSSION AND FINDINGS

22 As previously stated, no interested person, including the Petitioner or DTSC,
23 submitted a briefing argument on the issues that were granted review. This Order will
24 evaluate the merits of the Appeal in the light of applicable authority, and based on the
25 administrative record provided to the Permit Appeals Officer by DTSC.

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1 **Appeal Comments 1 and 2**

2 Petitioner's appeal comments 1 and 2 are reproduced from the petition as
3 follows:

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5 1. It is noted that DTSC has once again ignored the "...at least 45
6 days for public comment." The period required by California Code of
7 Regulations, title 22, section 66271.9(b)(1). The public comment period
8 was arbitrarily determined by DTSC to end at 5:00 pm on September 15,
9 2008. It started on August 1, 2008. The regulations do not require just
10 44 2/3 days but require no less than 45 days. As DTSC so frequently
11 states in its own documents, days are assumed to mean calendar days
12 not business days unless other (sic) specified in its regulations. DTSC's
13 public comment notice has therefore misrepresented the time allowed for
14 public comment. Therefore, I am appealing all provisions in the final
15 permit and none of them should be placed in force until after the decision
16 on this appeal is made. The remedy being sought is re-notice and
17 response to my comments that were submitted within the regulatory 45-
18 day period. (emphasis in original)

19 2. Because DTSC refused to respond to public comments made
20 during the legal public comment period, all provisions in the final permit
21 are being appealed and none of them should be placed in force after the
22 decision on this appeal is made.

23 **Response to Appeal Comments 1 and 2**

24 Based on the review of the applicable regulations and the administrative record,
25 the Permit Appeals Officer finds that DTSC did not provide Petitioner the required public
26 comment period for the Evergreen Davis draft permit. The Permit Appeals Officer
27 further finds that Mr. Chandler's comments were timely submitted to DTSC and that
28 DTSC should have responded to them. Based on the following analysis and discussion,
the Final Permit Decision dated October 24, 2008, for the Standardized Hazardous
Waste Facility Permit, Series C, for the Evergreen Davis Facility is remanded to DTSC,
to respond to Petitioner's comments on the draft permit and to proceed as set forth in
Part VI of this Order, below.

1 As summarized in the "Order to Grant Review, to Reserve Issues, and to Set
2 Briefing Period" (Docket No.: PAT-FY08/09-04), the issue of timeliness involves at least
3 two aspects, based on the Petition and on facts in the administrative record. First is the
4 appropriateness of the 5:00 p.m. deadline on September 15, 2008. Second, the Petition
5 presents the issue of the correctness of the length of the actual public comment period
6 as required by California Code of Regulations, title 22, section 66271.9(b)(1), and the
7 application of California Code of Regulations, title 22, section 66271.21(a) through (d) in
8 instances, such as this, when notice is served by mail.

9 The starting point in the analysis is the requirement of California Code of
10 Regulations, title 22, section 66271.9 (a) that the public notice of the preparation of a
11 draft permit shall allow at least 45 days for public comment. California Code of
12 Regulations, title 22, section 66260.10 provides, in pertinent part, that "'(d)ay" means a
13 calendar day. Periods of time are calculated by excluding the first day and including the
14 last..." The plain meaning is that at least 45 full 24-hour days must be allowed for
15 public comment. We find no authority in law or regulation for DTSC's establishment of a
16 5:00 pm cutoff for public comments on what it perceived to be the last day for public
17 comment and we conclude that such foreshortening of the comment period by
18 designation of a fractional day reflecting the end of regular business hours is improper
19 when the effect is to reduce the comment period to less than 45 full, 24-hour days.
20 Further, this interpretation is consistent with DTSC's commitment to promoting public
21 participation.

22 We note that public notice was given by mailing a copy of the notice to various
23 parties including persons on the Facility mailing list as required by California Code of
24 Regulations, title 22, section 66271.9(c). Because one required method of giving public
25 notice of the draft permit is by mail, California Code of Regulations, title 22, section
26 66271.21(d) requires that three (3) days be added to the 45 day time period specified in
27 the Public Notice, for a total of 48 days. Petitioner's comments were submitted on
28 September 15th which is within 48 days. DTSC should have accepted Petitioner's

1 comments as timely and provided a response in the Response to Comments document
2 pursuant to California Code of Regulations, title 22, section 66271.16(2).

3 Accordingly, Appeal Comments 1 and 2 are granted in part and denied in part.
4 On remand, DTSC is directed to receive Petitioner's comments submitted on
5 September 15, 2008 (Attachment 1 hereto), to re-issue a Response to Comments
6 responding to the comments, and to proceed in compliance with California Code of
7 Regulations, title 22, sections 66260.13, 66260.14, and 66260.16 with regard to issuing
8 the final permit decision.

9 **Appeal Comments 3 through 15**

10 Appeal Comments 3 through 15 are set forth in the petition for review found as
11 Attachment 2 to this Order.

12 **Response to Appeal Comments 3 through 15**

13 The "Order to Grant Review, to Reserve Issues, and to Set Briefing Period"
14 (Docket No.: PAT-FY08/09-04) reserved a decision regarding Appeal Comments 3
15 through 15 pending the disposition of Appeal Comments 1 and 2 after interested
16 persons had an opportunity to submit briefing arguments.

17 The remand of the permit decision due to Appeal Comments 1 and 2 renders
18 moot the issues raised in Appeal Comments 3 through 15 because the process of public
19 comment regarding the draft permit did not run its course as required by the regulations.
20 Therefore, Appeal Comments 3 through 15 are denied as moot, without prejudice to
21 being raised again in any subsequent appeal of the final permit. After DTSC responds
22 to Petitioner's comments on the draft permit and reissues the final permit decision,
23 interested persons will have the opportunity to appeal the reissued decision if
24 necessary.

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1 **VI. ORDER**

2 For the reasons set forth above, the Permit Appeals Officer grants, in part,
3 Appeal Comments 1 and 2, as set forth below. To the extent parts of Appeal
4 Comments 1 and 2 are not expressly granted, they are hereby denied. Appeal
5 Comments 3 through 15 are denied in full without prejudice.

6 The Final Permit Decision dated October 24, 2008, for the Standardized
7 Hazardous Waste Facility Permit, Series C, for the Evergreen Davis Facility is hereby
8 remanded to DTSC for the following:

- 9 1. To receive and respond to Petitioner's comments submitted on the draft
10 permit;
- 11 2. To issue a revised Response to Comments document pursuant to California
12 Code of Regulations, title 22, section 66271.16; and
- 13 3. To proceed in compliance with California Code of Regulations, title 22,
14 section 66271.13 and 66271.14.

15 The Permit Decision of October 24, 2008 is hereby rescinded. Pursuant to
16 California Code of Regulations, title 22, section 66270.51, the expired permit issued on
17 December 30, 1997, shall continue in effect. This Order constitutes the Department's
18 final decision regarding the October 24, 2008, Permit Decision and this Order shall be
19 effective as of this date.

20
21 DATED: July 29, 2009

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23 //original signed by//

24 
25 Mohinder S. Sandhu, P.E.,
26 Permit Appeals Officer
27 Department of Toxic Substances Control

28 Attachments (2)

ATTACHMENT 1

Evergreen Oil, Inc. - Davis Final Appeal Decision and Order

July 29, 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 Oil, Inc. - Davis Final Appeal Decision and Order

July 29, 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 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
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Topanga, CA 90290