

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

IN THE MATTER OF:) Docket Number: PAT-FY08/09-06
)
EVERGREEN OIL, INC. – SANTA)
6 MARIA) DTSC PERMIT RENEWAL TEAM BRIEF
7 745-A West Betteravia Road) RE: PETITION FOR REVIEW
8 Santa Maria, California 93454)
)
9 EPA ID No. CAD 982446858)
) California Code of Regulations
) Title 22, section 66271.18
)

I. INTRODUCTION

This brief submits arguments on behalf of the Department of Toxic Substances Control (DTSC) Permit Renewal Team (the "Team"). On December 15, 2008, the Team issued a Standardized Hazardous Waste Facility Permit, Series C (Permit) to the Evergreen Oil, Inc – Santa Maria, ("Evergreen Oil") for its hazardous waste storage and transfer facility located at 745-A West Betteravia Road, Santa Maria, California (Facility). On January 20, 2009, Mr. Philip Chandler (Petitioner) filed a Petition to Review (Appeal) the Team's final permit decision. On May 5, 2009, DTSC's Permit Appeals Officer issued an Order denying the Petitioner's petition for review of Appeal Comments 1 through 5, 9, 11 through 16, and granting review of Appeal Comments 6, 7, 8, and 10. DTSC subsequently announced a briefing period to receive arguments concerning Appeal Comments 6, 7, 8, and 10.

II. APPEAL COMMENTS AND TEAM'S ARGUMENTS

The following are the Team's arguments regarding Appeal Comments 6, 7, 8, and 10:

A. Appeal Comment 6:

Petitioner's Appeal Comment:

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

7 **Team's Argument:**

8 Evergreen Oil submitted a Phase I Assessment to DTSC on March 31, 1994
9 stating that no hazardous waste was released at the Facility. DTSC approved the
10 Phase I Assessment and issued a Standardized Hazardous Waste Facility Permit to
11 Evergreen Oil on December 30, 1997. Since DTSC determined that there was no
12 release of hazardous waste at or from the Facility, the 1997 permit did not require
13 Evergreen Oil to conduct corrective action.

14 DTSC has since conducted regular inspections of the Facility over the years and
15 did not find any violations of the State hazardous waste management requirements or
16 any release of hazardous waste at or from the Facility. Therefore, based on the Phase
17 I Assessment and the findings of these inspections of the Facility, the Team concluded
18 that no corrective action was necessary at the time the Permit was issued. The Permit,
19 however, provides that In the event that corrective action is found to be necessary,
20 Evergreen Oil is required to conduct corrective action pursuant to either a Corrective
21 Action Consent Agreement or an Enforcement Order for Corrective Action issued by
22 DTSC pursuant to Health and Safety Code sections 25187 and 25200.10.

23 DTSC's Order granting review of Appeal Comment 6 further states: "The
24 administrative record, however, does not, on its face, contain documents supporting
25 DTSC's statement. For this reason, review of this comment is granted." The Team
26 disagrees with this statement. Pursuant to California Code of Regulations, title 22,
27 section 66271.17(e), the Team did not need to physically include the Phase I
28 Assessment and the inspection reports in the Permit's administrative record because

1 these documents were referenced in the Fact Sheet dated July 2008 and DTSC's
2 Response to Comments. These documents were also readily available at DTSC in its
3 public record file.

4
5 **B. Appeal Comment 7:**

6 **Petitioner's Appeal Comment:**

7 The AFR for corrective action is required by statute to be included in permits
8 issued by DTSC. Why is not this addressed? Why isn't the AFR for corrective action
9 addressed in the corrective (sic) section of the permit? By its silence on corrective
10 action AFR, it is believed that this permit is inconsistent with and contradictory to the
11 intent of H&SC 25200.10(b). This section of H&SC requires that, **"When corrective
12 action cannot be completed prior to issuance of the permit, the permit shall
13 contain schedules of compliance for corrective action and assurances of
14 financial responsibility for completing the corrective action. [H&SC 25200.10{b}]**
15 Title 22 states **That the permit or order [emphasis added] will contain schedules of
16 compliance for such corrective action (where such corrective action cannot be
17 completed prior to issuance of the permit) and assurances of financial
18 responsibility for completing such corrective action."** [Title 22 CCR 66264.101(b)]
19 (emphasis in original).

20 **Team's Argument:**

21 As stated in the Team's Argument regarding Appeal Comment 6, DTSC
22 determined that corrective action was not necessary at the Evergreen Oil facility at the
23 time the Permit was issued. Therefore, assurances for financial responsibility for
24 corrective action were not required for the purpose of the Permit. The Permit, however,
25 provides that in the event that corrective action is found to be necessary, Evergreen Oil
26 is required to conduct corrective action pursuant to either a Corrective Action Consent
27 Agreement or an Enforcement Order for Corrective Action issued by DTSC pursuant to
28 Health and Safety Code sections 25187 and 25200.10. In that case, the Corrective

1 Action Consent Agreement or the Enforcement Order for Corrective Action would
2 include a requirement for assurances for financial responsibility.

3 As the Petitioner pointed out in his Appeal Comment, DTSC uses a corrective
4 action consent agreement, which is an order on consent, to implement any required
5 corrective action at a facility. DTSC's corrective action consent agreement model
6 complies with the requirements of California Code of Regulations, title 22, section
7 66270.33. Conditions and the schedule for compliance in a consent agreement are as
8 enforceable as conditions in a permit or an enforcement order. The corrective action
9 activities required by a consent agreement, including the facility investigation and
10 remedy selection phases, are subject to the California Environmental Quality Act and
11 DTSC's public participation process. The signed consent agreements are public
12 records and are posted on DTSC's website at www.dtsc.ca.gov. The Team strongly
13 disagrees with the Petitioner's statement that DTSC was "attempting to end run its
14 obligation to make a clear administrative decision - subject to public comment and
15 CEQA - on the issue of corrective action."

16
17 **C. Appeal Comment 8:**

18 **Petitioner's Appeal Comment:**

19 I petition that the corrective action section of the Permit is rewritten to be specific
20 as to what constitutes the "Facility" for purposes of corrective action. Specifically,
21 despite Evergreen only using a fraction of the involved parcel, corrective action needs to
22 be applicable across all of the property, not just that portion carved out for use by
23 Evergreen.

24 **Team's Argument:**

25 The Petitioner requested that the corrective action portion of the Permit be
26 rewritten to be specific as to what constitutes the "Facility" for purposes of corrective
27 action. When this issue was raised during the public comment period, the Team, in its
28 Response to Comments, pointed out the regulatory definition of a "hazardous waste

1 facility”, and the statutory and regulatory requirements regarding where corrective action
2 should be conducted. The Permit Appeals Officer’s Order agreed that the statutory and
3 regulatory requirements for corrective action were accurately in the Team’s Response
4 to Comments, but stated that “the Department cannot verify that the cited requirements
5 were applied to this case because the administrative record, does not, on its face,
6 contain the necessary documentation.” The Team disagrees with this statement in the
7 Permit Appeals Officer’s Order.

8 The regulatory definition of a “hazardous waste facility”, and the statutory and
9 regulatory requirements regarding where corrective action should be conducted apply to
10 all the hazardous waste facilities. As provided in California Code of Regulations, title
11 22, section 66261.10, for the purposes of implementing corrective action, a hazardous
12 waste facility includes all contiguous property under the control of the owner or operator
13 required to implement corrective action. (emphasis added.) In this case, it means all
14 property under the control of Evergreen Oil.

15 Part II, Section 4 of the Permit states that “The Facility occupies approximately
16 4,000 square feet and is about 500 feet north of West Betteravia Road on a five acre
17 property owned by Rosemary V. Engle, Carl W. Engle and the Carl. W. Engle Family
18 Trust.” Section 1.F of the Standardized Permit Application (Permit Application) states
19 that “Evergreen leases a very small parcel from the property owner within an existing 5
20 acres site.” Attachments 1.1 to 1.3 of the Permit Application show the relationship of
21 the Facility within the larger property boundaries. The factsheet also states “Evergreen
22 Oil is a permitted hazardous waste storage facility, within the Engel and Gray, Inc.
23 company site. These documents clearly show that the Facility is only a small part of a
24 larger property, and that Evergreen Oil’s control only extends to the 4000-square-foot
25 parcel described and shown in the Permit, the Fact Sheet, and the Permit Application.

26 Nevertheless, Health and Safety Code section 25200.10(b) provides that “any
27 corrective action required pursuant to this section shall require that corrective action be
28 taken beyond the facility boundary where necessary to protect human health and safety

1 or the environment.” Therefore, the area where corrective action may be required is not
2 limited to the boundary of the property that is under the control of Evergreen Oil. This
3 point has been made clear by the specific citation of Health and Safety Code section
4 25200.10 in Part VI of the Permit which governs corrective action.

5 The Permit Appeals Officer’s Order granting review of Appeal Comment 8 states:
6 “[T]he administrative record does not, on its face, contain the necessary documentation”
7 supporting the Team’s position. The Team disagrees with this statement in the Permit
8 Appeals Officer’s Order. These documents, including the Permit Application on CD,
9 were part of the administrative record provided to the Permit Appeals Team. Please
10 note that pursuant to California Code of Regulations, title 22, section 66271.17(e), the
11 Team did not need to physically include all the documents, especially the voluminous
12 Permit Application and its Attachments, in the Permit’s administrative record because
13 these documents were referenced in the Fact Sheet dated July 2008 and DTSC’s
14 Response to Comments. These documents were also readily available at DTSC in its
15 public record file.

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17
18 **D. Appeal Comment 10:**

19 **Petitioner’s Appeal Comment:**

20 I petition that specific construction standards for the secondary containment be
21 included as permit conditions in Section IV – since they do not appear to have been
22 included in the “Application”.

23 **Team’s Argument:**

24 Construction standards are adopted and enforced by local agencies. Evergreen
25 Oil constructed the Facility and the secondary containment in accordance with the
26 building permit and other forms of building-related authorization issued by the City of
27 Santa Maria at the time of construction. Local agencies adopt their own building
28 standards and codes consistent with the applicable provisions of the Uniform Building

1 Code and the California Building Code. According to the City of Santa Maria's website,
2 the City of Santa Maria enforces the minimum standards found in the various model or
3 uniform codes as adopted by its City Council. They include, but are not limited to, the
4 2007 California Building Code; the 2007 California Plumbing Code; the 2007 California
5 Mechanical Code; the 2007 California Electrical Code; and the 2007 California Fire
6 Code.

7 DTSC, on the other hand, has the statutory and regulatory authority to adopt and
8 enforce hazardous waste management requirements. These requirements are to
9 ensure that the facility is designed, constructed, maintained and operated in order to
10 meet specific performance standards and objectives. For example, California Code of
11 Regulations, title 22, Section 66264.31 provides that, "Facilities shall be located,
12 designed, constructed, maintained, and operated to minimize the possibility of a fire,
13 explosion, or any unplanned sudden or non-sudden release of hazardous waste or
14 hazardous waste constituents to air, soil, or surface water which could threaten human
15 health or the environment."

16 California Code of Regulations, title 22, Section 66264.175(b) provides in part
17 that, "A containment system shall be designed and operated as follows:

18 (1) a base shall underlie the containers which is free of cracks or gaps and is
19 sufficiently impervious to contain leaks, spills, and accumulated precipitation until the
20 collected material is detected and removed;

21 (2) the base shall be sloped or the containment system shall be otherwise
22 designed and operated to drain and remove liquids resulting from leaks, spills, or
23 precipitation, unless the containers are elevated or are otherwise protected from contact
24 with accumulated liquids;

25 (3) the containment system shall have sufficient capacity to contain precipitation
26 from at least a 24-hour, 25-year storm plus 10 % of the aggregate volume of all
27 containers or the volume of the largest container, whichever is greater. Containers that
28 do not contain free liquids need not be considered in this determination; ..."

1 California Code of Regulations, title 22, Section 66264.175(c) provides that, "The
2 owner or operator shall submit to the Department with the application for a hazardous
3 waste facility permit a written statement signed by an independent, qualified
4 professional engineer, registered in California, that indicates that the containment
5 system is suitably designed to achieve the requirements of this section."

6 In this case, the Permit Application, as well as the Permit (physical description of
7 the units), included detailed description of the design and construction of the secondary
8 containment. The Permit Application also included a statement signed by a
9 professional engineer certifying that the secondary containment met the requirements of
10 California Code of Regulations, title 22, section 66264.175(b). In addition, Part III.2.(a)
11 of the Permit provides that, "The Permittee shall comply with the terms and conditions of
12 this Permit and the provisions of the Health and Safety Code and California Code of
13 Regulations (Cal. Code Regs.), title 22, division 4.5. The issuance of this Permit by
14 DTSC does not release the Permittee from any liability or duty imposed by federal or
15 state statutes or regulations or local ordinances, except the obligation to obtain this
16 Permit. The Permittee shall obtain the permits required by other governmental
17 agencies, including but not limited to, those required by the applicable land use
18 planning, zoning, hazardous waste, air quality, water quality, and solid waste
19 management laws for the construction and/or operation of the Facility."

20 21 III. CONCLUSION

22 For the reasons discussed above, the Team requests that Appeal Comments 6,
23 7, 8, and 10 be denied.

24
25 DATED: July 31, 2009

//original signed by//

26
27 _____
28 Alfred Wong
Permit Renewal Team
Department of Toxic Substances
Control