

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of: ) Docket HWCA 06/07-P002  
INDUSTRIAL SERVICE OIL COMPANY, INC. ) FINAL APPEALS DECISION AND ORDER  
1700 South Soto Street )  
Los Angeles, California ) California Code of Regulations, Title 22,  
Section 66271.18  
U.S. EPA Id. No. CAD 099 452 708 ) Effective Date: June 25, 2008

**I. INTRODUCTION**

On December 18, 2006, the Department of Toxic Substances Control (Department or DTSC), Southern California Permitting and Corrective Action Branch (SCPCAB), issued a Hazardous Waste Facility Permit (permit) decision for Industrial Service Oil Company, Inc. (ISOCI), located at 1700 South Soto Street, Los Angeles, California 90023.

On June 29, 2007, the Department's Permit Appeals Officer<sup>1</sup> issued Order number HWCA 06/07-P002, granting review for twenty (20) issues raised by various petitioners. Pursuant to California Code of Regulations, title 22, section 66271.18(c), the Permit Appeals Officer established a briefing period for this appeal, which concluded on October 26, 2007. Interested persons were invited to submit written arguments pertaining to the issues granted review. Written arguments were received from the following:

1. Communities for a Better Environment (CBE) by Ms. Adrienne Bloch, joined by California Communities Against Toxics (CCAT) by Ms. Jane Williams;
2. Department of Building and Safety, City of Los Angeles, by Mr. Hector Buitago, Assistant General Manager;
3. Mr. Gaspar Carrillo;
4. Los Angeles City Councilmember Jose Huizar, 14th District;
5. SCPCAB by Mr. Jose Kou;

<sup>1</sup> Mr. Mohinder S. Sandhu, P.E. At that time his title was Chief, Standardized Permitting and Corrective Action Branch, DTSC.

1 6. ISOCI by Mr. Anu Sood, EP Consultants; and,

2 7. Community Redevelopment Agency, City of Los Angeles, by Ms. Julia Stewart.

3 This Final Appeals Decision and Order constitutes the final decision on the merits of  
4 the petitions for review of the final permit decision for the ISOCI facility.

## 5 **II. JURISDICTION**

6 The Department has jurisdiction over hazardous waste facility permits and the  
7 imposition of conditions on such permits pursuant to the California Health and Safety Code  
8 section 25200 et seq., and California Code of Regulations, title 22, section 66270.1 et seq.

9 On July 23, 1992, the State of California received final authorization under section  
10 3006(b) of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42  
11 U.S.C. section 6926(b), to operate its hazardous waste program in lieu of the federal program.  
12 (57 Fed. Reg. 32,726 (July 23, 1992)). As a RCRA-authorized state, California has the  
13 authority to issue, modify and administer RCRA-equivalent permits.

## 14 **III. BACKGROUND**

### 15 **A. FACILITY DESCRIPTION AND HISTORY**

16 The ISOCI facility is a used oil and spent antifreeze treatment, storage and recycling  
17 facility, which commenced operations in 1974. In 1986, the Department issued an Interim  
18 Status Document for the hazardous waste treatment and storage operations to this facility.

19 The facility is located on a 2.7 acre triangular lot at 1700 South Soto Street, in the City  
20 of Los Angeles, County of Los Angeles. In December 2003, ISOCI acquired an additional  
21 2.6363 acres adjacent to the south border of the facility.<sup>2</sup> The facility property and the  
22 immediate adjacent areas are zoned for heavy industrial use interspersed with a few  
23 commercially-zoned areas. The City of Vernon, located about one-half mile south of the  
24 facility, is zoned primarily for industrial uses. The closest residences are located  
25 approximately one-half mile north of the facility.

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<sup>2</sup> The source of this facility property information is the ISOCI permit condition II.5.

1 Currently authorized operations at the facility include the processing of used oil (which  
2 is regulated as hazardous waste) to produce recycled oil. Used oil processing involves the  
3 use of heat and addition of chemicals to separate solids, water and other impurities from the  
4 used oil. Treated used oil must continue to be managed as a hazardous waste until it has  
5 been analyzed and certified as meeting the regulatory criteria for recycled oil. The recycled oil  
6 is sold to petroleum buyers that use it for various purposes. The facility also receives waste  
7 antifreeze, which it consolidates and ships off-site for recycling.

8 The facility is currently authorized by DTSC to store up to 350,000 gallons of waste  
9 liquids: up to 15,000 gallons for spent antifreeze and the remainder for used oil. One of the  
10 seven tanks is also authorized under the facility's current Interim Status Document to be used  
11 for the storage of treated oil pending laboratory analysis and certification as recycled oil. In  
12 the event a laboratory certification analysis indicates that tested oil does not meet the  
13 regulatory standards for recycled oil, the oil continues to be regulated as a hazardous waste  
14 and is removed from the storage tank, processed in the facility's used oil treatment unit, and  
15 re-analyzed for certification as recycled oil. Oil that continues to fail certification requirements  
16 is sent off-site for disposal as a hazardous waste.

17 **B. PERMIT DECISION**

18 ISOCI submitted a RCRA-equivalent Part A Permit Application to the Department on  
19 May 23, 1986, with subsequent revisions dated March 9, 1989, and October 8, 2004. The  
20 Department issued an Interim Status Document in 1986, under which ISOCI has been  
21 operating.

22 The initial Part B Permit Application to the Department was submitted in 1988. This  
23 Part B Permit Application was revised in August 1994, 1997, and September 2000 (revision 0)  
24 by ISOCI's consultant, Southcoast Wastec, Inc. dba JRJ Associates under the direction of  
25 Mr. Joseph R. Johnson, P.E.

26 EP Consultants, on behalf of the ISOCI, submitted revised applications in June 2002  
27 (Revision 1), October 2002 (Revision 2), November 2003 (Revision 3), June 2004 (Revision  
28 4), August 2004 (Revision 5), October 2004 (Revision 6) and August 2005 (Revision 7).

1 On December 15, 2005, the Department issued a public notice announcing the start of  
2 a 60-day public comment period for both the Draft Permit and California Environmental Quality  
3 Act (CEQA) draft Environmental Impact Report (EIR). That comment period ran through  
4 February 13, 2006. A public hearing was held on January 21, 2006, at the Ross Snyder  
5 Recreational Center, 1501 East 41st Street, Los Angeles, California. During the initial public  
6 comment period and at the public hearing, members of the community requested an extension  
7 to the 60-day comment period. The Department extended the comment period until  
8 April 14, 2006.

9 On December 18, 2006, the Department issued a Notice of Final Hazardous Waste  
10 Facility Permit Decision and established a 30-day period ending on January 19, 2007, for filing  
11 a petition for review of the decision under California Code of Regulations, title 22, section  
12 66271.18. The Department also prepared a Response to Comments document, a copy of  
13 which was sent to each commenter. The Response to Comments document, the Department  
14 memorandum to file listing the revisions made to the permit in response to public comments,  
15 and a redline/strikeout version of the permit showing all the changes from the Draft to the Final  
16 Permit, were made available to the public at the Department's Glendale Office and at the  
17 Robert Louis Stevenson Branch Library, 803 Spence Street, Los Angeles, California. The  
18 Final EIR was also available for review at these locations. These documents were also  
19 available for viewing on DTSC's website.

20 On January 2, 2007, the Department issued an Amended Notice of Final Hazardous  
21 Waste Facility Permit Decision, extending the period to submit a petition for review of the final  
22 permit decision to February 1, 2007. Another Amended Notice of Final Hazardous Waste  
23 Facility Permit Decision was issued by the Department on February 1, 2007, further extending  
24 the review period to March 5, 2007.

25 The final permit, if effective, would allow the facility to continue its operations  
26 authorized under the previous Interim Status Document plus make the following changes<sup>3</sup>:

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28 <sup>3</sup> See December 2005 Fact Sheet for the draft permit.

1. Construct 11,000 gallon and 35,200 gallon containment management areas for waste containers;
2. Install a wastewater treatment system with a production capacity of 84,600 gallons per day of treatment and 228,040 gallons of tank storage;
3. Increase the production of the oil treatment system to 228,600 gallons per day and reduce the tank storage from 746,619 gallons to 628,612 gallons capacity;
4. Install a fuel blending treatment unit with a capacity of 25,000 gallons per day and 111,325 gallons of tank storage;
5. Install a glycol recovery system with a treatment capacity of 86,400 gallons per day and 28,035 gallons of tank storage;
6. Increase the rail car loading and unloading to 150,000 gallons per day and 250,000 gallons of rail car storage;
7. Install a waste solids treatment unit with a treatment capacity of 14,400 gallons per day and a storage capacity of 10,000 gallons; and,
8. Expand the list of acceptable federal and state waste codes for storage and treatment.

**C. PERMIT APPEAL PROCESS**

Pursuant to California Code of Regulations, title 22, section 66271.18(a), the period for filing a petition for review (appeal) of the ISOCI final Permit decision ended on March 5, 2007.

Five petitions for review were received on or before that date:

1. Communities for a Better Environment by Ms. Adrienne L. Bloch, joined by California Coalition Against Taxes by Ms. Jane Williams and ProUno by Mr. Felipe Aguirre.
2. Ms. Terry Cano;
3. ISOCI by E P Consultants;
4. Los Angeles City Councilmember Jose Huizar;
5. Community Redevelopment Agency of the City of Los Angeles (CRA/LA).

1 Pursuant to California Code of Regulations, title 22, section 66271.18(c), the Permit  
2 Appeals Officer issued the "Order to Set Briefing Period for Petition for Review and Denial of  
3 Review," Docket HWCA 06/07-002, on June 29, 2007, granting review for 20 appeal  
4 comments and staying the permit. A public notice was issued establishing a briefing schedule  
5 for the purpose of allowing individuals an opportunity to file a written argument concerning the  
6 appeal comments granted review. The appeal briefing period began on September 6, 2007,  
7 and ended on October 26, 2007. Seven briefing documents were received from the following  
8 persons (briefers) on or before October 26, 2007:

- 9 1. CBE by Ms. Adrienne Bloch and joined by CCAT by Ms. Jane Williams;
- 10 2. Department of Building and Safety, City of Los Angeles, by Mr. Hector Buitrago;
- 11 3. Mr. Gaspar Carrillo;
- 12 4. Los Angeles City Councilmember Jose Huizar, 14th District;
- 13 5. SCPCAB by Mr. Jose Kou;
- 14 6. ISOCI by Mr. Anu Sood, EP Consultants; and,
- 15 7. Community Redevelopment Agency, City of Los Angeles, by Ms. Julia Stewart.

16 In response to a request from Councilmember Jose Huizar, the Permit Appeals Officer  
17 held an Informal Appeals Conference on February 12, 2008, at the Resurrection Church Hall,  
18 3360 Opal Street, Los Angeles, California. Oral arguments, rebuttal remarks, and/or  
19 responses to questions from the Permit Appeals Officer and his staff were made by the  
20 following individuals:

- 21 1. Los Angeles City Councilmember Jose Huizar, 14th District;
- 22 2. Planning and Economic Development Director, 14th District, City of Los  
23 Angeles by Ms. Jessica Wethington McLean;
- 24 3. CBE by Ms. Adrienne Bloch;
- 25 4. Community Redevelopment Agency, City of Los Angeles, by Ms. Julia Stewart;
- 26 5. ISOCI by Mr. Anu Sood, EP Consultants;
- 27 6. ISOCI by Mr. Skip Ricarte, EP Consultants; and,
- 28 7. SCPCAB by Mr. Jose Kou.

1 A transcript of the Informal Appeals Conference was prepared.

#### 2 **IV. FINDINGS**

3 This Decision addresses only the 20 appeal comments that were granted review in the  
4 “Order to Set Briefing Period for Petition for Review and Denial of Review,” dated  
5 June 29, 2007. The analysis of each appeal comment for the purpose of this Final Appeals  
6 Decision and Order (Final Order) includes review of the relevant portions of all submissions on  
7 that comment/issue by all parties, including but not limited to comments on the draft permit,  
8 subsequent appeal comments, briefs and counter briefs. However, the issues raised by  
9 petitioners and others in briefing documents that are not germane to the 20 appeal comments  
10 were not addressed because they are outside the scope of this review. The sequence and the  
11 text of each appeal comment addressed in this Final Order is the same as presented in the  
12 “Order to Set Briefing Period for Petition for Review and Denial of Review.” The following  
13 terms used throughout this order are defined as follows:

- 14 1. **“permit comment”** refers to a comment submitted on the draft permit during  
15 the review period;
- 16 2. **“response to comment”** refers to the SCPCAB’s response to a “permit  
17 comment” issued with the final permit decision;
- 18 3. **“appeal comment”** refers to one of the 20 appeal comments accepted for  
19 review and as numbered in the “Order to Set Briefing Period for Petition for  
20 Review and Denial of Review,” dated June 29, 2007;
- 21 4. **“appeal briefing statement”** refers to a statement submitted in response to  
22 the Order to Set Briefing Period for Review and Denial of Review;
- 23 5. **“IAC statement”** refers to a statement made during the Informal Appeals  
24 Conference on February 12, 2008, and reported in the transcript.
- 25 6. **“Briefing Order”** refers to the “Order to Set Briefing Period for Petition for  
26 Review and Denial of Review,” dated June 29, 2007
- 27 7. **“Final Order”** refers to this Final Appeals Decision and Order containing the  
28 final decision on the remaining 20 appeal comments.

1 **A. APPEAL COMMENT 1-7 BY CBE (RAIL CAR STORAGE CONTAINMENT)**

2 *The permit allows ISOCI to store up to 250,000 gallons of hazardous waste in rail cars*  
3 *for up to one year on a rail spur without adequate secondary containment. Storage of this*  
4 *amount of hazardous waste for such an extended period of time is unprecedented in*  
5 *California, posing severe risks to the surrounding communities that have not been properly*  
6 *analyzed.*

7 **Analysis of Appeal Comment 1-7**

8 In order to clarify the analysis of this comment, it has been separated into two  
9 subparts.

10 **Comment 1-7a**

11 *The permit allows ISOCI to store up to 250,000 gallons of hazardous waste in rail cars*  
12 *for up to one year on a rail spur without adequate secondary containment.*

13 **Response to Comment 1-7a:**

14 This portion of the appeal comment questioning the adequacy of the rail car secondary  
15 containment is granted as discussed in the following analysis. The SCPCAB's briefing  
16 statement concurs with the professional engineer's determination in Part B Permit Application  
17 Exhibit IV-1, "Inspection and Certification of Secondary Containment For Rail Car Storage  
18 Area (2 Rail Spurs)," dated September 8, 2000, JRJ Associates. The certification states that  
19 the secondary containment system meets the requirements of California Code of Regulations,  
20 title 22, section 66264.193 and the "Operated to Contain Definition." The Operated to Contain  
21 Definition is from the November 30, 1989 letter from Sylvia K. Lowrance (United States  
22 Environmental Protection Agency, USEPA) discussed by the petitioners. CBE's appeal  
23 comment and briefing statement dispute the engineering certification for failure to meet the  
24 requirements of California Code of Regulations, title 22, section 66264.175(b)(1), (b)(3) and  
25 (b)(5). CBE states that: 1) the secondary containment pans are not wide enough to contain  
26 spills if the rail car is tipped over or if waste sprays outward from a leak in the rail car (section  
27 66264.175(b)(1)); 2) the containment system capacity is inadequate to passively contain the  
28 required volume (section 66264.175(b)(3)); and, 3) the active containment system is

1 inadequate to remove waste and precipitation from the collection area as necessary to prevent  
2 overflow of the collection system (section 66264.175(b)(5)).

3 The secondary containment system analysis in Exhibit IV-1, calculates that the peak  
4 flow rate from a 3.5 inch internal diameter (ID) valve at the bottom of a 10 foot diameter rail car  
5 would be 458 gallons per minute (gpm). The specified secondary containment sump pump  
6 has a pumping rate of 230 gpm and there are two sump pumps, so the total pumping capacity  
7 of 460 gpm is greater than the peak discharge rate from the rail car. The analysis does not  
8 calculate the drainage rate for the containment pans. Considering the limited storage capacity  
9 of the secondary containment pans, if the drainage rate from the containment pans is less than  
10 the discharge rate from the rail car, then waste liquid will accumulate in the containment pans  
11 and may overflow. If this occurs, the “active” secondary containment system would not meet  
12 the performance requirements of California Code of Regulations, title 22, section  
13 66264.175(b)(5).

14 ISOCI must amend the engineering certification in Exhibit IV-1 so that it demonstrates,  
15 to the satisfaction of the Department’s Chief Engineer<sup>4</sup>, that the secondary containment  
16 system will operate without overflowing. The amended certification must also include  
17 precipitation from a 25-year storm during the discharge from the rail car. Because the  
18 discharge rate from the rail car depends on the size of the unloading valve, the valve size  
19 selected for the amended certification should represent the upper bound of valve size on rail  
20 cars to be managed at the facility.

21 CBE’s appeal comment included a footnote identifying a typographical error in permit  
22 condition II.5, “Rail Spur.” The last sentence says, “A railcar may store up to 250,000 gallons  
23 of wastes.” The correct volume is 25,000 gallons. The last sentence of permit condition II.5.  
24 “Rail Spur” is hereby corrected to, “A railcar may store up to 25,000 gallons of wastes.”  
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28 <sup>4</sup> Mr. Watson Gin, P.E., Chief Engineer and Sponsor of the two Permitting Teams, Department of Toxic Substances Control.

1 Comment 1-7b

2 *Storage of this amount of hazardous waste for such an extended period (up to one*  
3 *year) of time is unprecedented in California, posing severe risks to the surrounding*  
4 *communities that have not been properly analyzed. (Parentheses added.)*

5 Response to Comment 1-7b

6 This portion of the appeal comment is denied as discussed in the following analysis.  
7 CBE's comment that the environmental review does not contain an analysis of the risks from a  
8 catastrophic release of hazardous waste from the rail cars is in reference to the Environmental  
9 Impact Report (EIR). The EIR was prepared for compliance with the California Environmental  
10 Quality Act (CEQA, Public Resources Code, section 21000 et seq.), which provides a separate  
11 judicial appeal process to resolve disputes. This permit appeal is not the proper forum to raise  
12 CEQA issues. In addition, CBE's appeal comment and briefing statement raised concerns that  
13 use of the rail cars is an attempt to avoid the requirements for stationary tanks. However, CBE  
14 did not provide any evidence to support their supposition. The descriptions in the Part B  
15 Permit Application of activities at the Rail Car Loading and Unloading Unit are consistent with  
16 the use of rail cars for waste transportation, rather than tank storage.

17 **Conclusions for Appeal Comment 1-7:**

18 For the reasons discussed for appeal comment 1-7a, the portion of appeal comment  
19 1-7 concerning the adequacy of the Rail Car Loading and Unloading Unit secondary  
20 containment is granted. ISOCI is required to amend the engineering certification to clearly  
21 demonstrate that the secondary containment can operate in a manner that achieves the  
22 design and performance standards of California Code of Regulations, title 22, section  
23 66264.175(b). The authorization for operation of the Rail Car Loading and Unloading unit (Rail  
24 unit) granted under permit condition IV is hereby stayed until the Department's Chief Engineer  
25 or his designee approves, in writing, the amended engineering certification. Pending the Chief  
26 Engineer's determination, the facility may operate the Rail unit in a manner and at levels  
27 authorized by the Interim Status Document or any other previous written authorization issued  
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1 by DTSC regarding this unit.<sup>5</sup> The Chief Engineer's determination will take one of three forms,  
2 each with a different impact of the facility's use of the Rail unit:

- 3 1. If the Chief Engineer determines that the facility has made a showing sufficient to  
4 support an amended certification demonstrating performance of the existing secondary  
5 containment system design without overflowing, the facility is authorized to operate the  
6 Rail unit at levels specified by the permit;
- 7 2. If the Chief Engineer determines that the facility has not made and cannot make a  
8 showing sufficient to support an amended certification demonstrating performance of  
9 the existing secondary containment system design without overflowing, the facility may  
10 not operate the Rail unit, and the authorization for operation of the Rail unit pursuant to  
11 the Interim Status Document is terminated;
- 12 3. If the Chief Engineer determines that the facility has made a showing sufficient to  
13 support an amended certification demonstrating performance of the secondary  
14 containment system design without overflowing, but the approved design is a re-design  
15 of the existing design, the facility is not authorized to operate the Rail unit unless and  
16 until the new design and associated activities are approved as a permit modification.

17 The last sentence of permit condition II.5. "Rail Spur" is hereby modified to, "A railcar  
18 may store up to 25,000 gallons of wastes."

19 For the reasons discussed for appeal comment 1-7b, the portions of appeal comment  
20 1-7 related to the adequacy of the environmental review and to CBE's supposition that ISOCI's  
21 use of rail cars is intended to circumvent stationary tank requirements are denied.

22 **B. APPEAL COMMENT 1-9 BY CBE (WASTE ANALYSIS PLAN)**

23 *The facility's Waste Analysis Plan (WAP)<sup>6</sup> is complex and difficult to understand, and*  
24 *will be challenging to implement even with highly educated and trained personnel. CBE*  
25 *requested that personnel performing the WAP tasks have proper education and training.*

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27 <sup>5</sup> By referring to "the Interim Status Document or any other previous written authorization issued by  
28 DTSC", the Permit Appeals Officer makes no finding regarding the validity of such authorizations. For  
purposes of this Order, "Interim Status Document" includes "any other previous written authorization(s)."

<sup>6</sup> This appeal comment is referring to Part B Permit Application section III, "Waste Characterization."

1 *Figure III-2 of the WAP which refers to a flow chart for waste receiving procedures was not*  
2 *included in this version of the WAP. DTSC did not explain how this objective has been met.*  
3 *The WAP included in the Part B application is dated June 2004. There is no indication that*  
4 *DTSC has required ISOCI to revise the WAP to reflect that waste analysis tasks will always be*  
5 *performed by trained personnel, or to require that ISOCI document that all personnel have*  
6 *received appropriate training. The WAP is unclear as to which analyses will be performed in-*  
7 *house by ISOCI rather than by outside laboratory services and the WAP should be revised to*  
8 *clarify this issue.*

9 **Analysis of Appeal Comment 1-9**

10 In order to clarify the analysis of this comment, it has been separated into four  
11 subparts.

12 **Comment 1-9a**

13 *The facility's Waste Analysis Plan (WAP) is complex and difficult to understand, and*  
14 *will be challenging to implement even with highly educated and trained personnel. CBE*  
15 *requested that personnel performing the WAP tasks have proper education and training.*  
16 *DTSC did not explain how this objective has been met.*

17 **Response to Comment 1-9a**

18 This appeal comment is denied as discussed in the following analysis. The facility  
19 personnel job descriptions and qualifications are provided in Part B Permit Application section  
20 IX.G. The job descriptions relevant to the implementation of the Waste Analysis Plan are: Lab  
21 Technician, Chemist, Assistant Facility Manager, and Facility Manager. The education and  
22 experience qualifications for these positions seem to be appropriate for the Waste Analysis  
23 Plan tasks and responsibilities. The Lab Technician collects samples and conducts  
24 "fingerprint" tests using equipment such as pH meters and chemical test kits. A high school  
25 education and on-the-job training for sample collection methods and use of the manufacturer's  
26 instructions for meters and test kits seem appropriate. Review of waste profile chemical  
27 characterization information and waste management decisions are the responsibility of the  
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1 Chemist and Facility Manager, who have college degrees in chemistry or environmental  
2 science or equivalent work experience.

3 Comment 1-9b

4 *Figure III-2 of the WAP which refers to a flow chart for waste receiving procedures was*  
5 *not included in this version of the WAP.*

6 Response to Comment 1-9b:

7 This appeal comment is denied as discussed in the following analysis. CBE's  
8 comment only asks for an explanation of why Figure III-2 was not made available for public  
9 review. The SCPCAB did not provide an explanation in the response to permit comment 4-13  
10 or in their briefing statement for appeal comment 1-9. The Permit Appeals Officer has no  
11 additional information concerning the requested explanation. Because CBE did not comment  
12 on the content of Figure III-2 or any associated permit condition, no additional appeal  
13 response is required.

14 Comment 1-9c

15 *The WAP included in the Part B application is dated June 2004. There is no indication*  
16 *that DTSC has required ISOCI to revise the WAP to reflect that waste analysis tasks will*  
17 *always be performed by trained personnel, or to require that ISOCI document that all*  
18 *personnel have received appropriate training.*

19 Response to Comment 1-9c:

20 This appeal comment is denied as discussed in the following analysis. CBE's appeal  
21 comment and permit comment 4-13 may be misinterpreting Part B Permit Application section  
22 III.D.(5), which says, "Screening tests will normally be accomplished at the facility by trained  
23 personnel." CBE's comments indicate their interpretation is, "the WAP states that waste  
24 analysis tasks, including sampling, "normally" will be performed by trained personnel." The  
25 sentence in section III.D.(5) means that sometimes screening tests may be conducted at off-  
26 site laboratories, but normally they are done at the facility.

27 CBE commented that "... the training records provided in the Part B were from June  
28 2004. So CBE had no way to evaluate if current (2006) ISOCI employees were properly

1 trained.” It should be noted that the Part B Permit Application is not the repository for the most  
2 current training records. Current training records are required to be maintained at the facility  
3 pursuant to California Code of Regulations, title 22, section 66264.16(d) and on-going  
4 compliance with section 66264.16 is evaluated by DTSC during periodic enforcement  
5 inspections.

6 Comment 1-9d

7 *The WAP is unclear as to which analyses will be performed in-house by ISOCI rather*  
8 *than by outside laboratory services and the WAP should be revised to clarify this issue.*

9 Response to Comment 1-9d

10 This appeal comment is denied as discussed in the following analysis. The Part B  
11 Permit Application section III.D. is reasonably clear that pre-acceptance chemical  
12 characterization, certification analyses of product recycled oil, analyses for land disposal  
13 restrictions, and analyses of effluent wastewater and stabilized waste solids will be performed  
14 by an off-site certified laboratory. Fingerprint testing of incoming waste shipments will be  
15 conducted at the facility.<sup>7</sup>

16 **Conclusions for Appeal Comment 1-9**

17 For the reasons discussed in the responses to appeal comments 1-9a through 1-9d,  
18 appeal comment 1-9 is hereby denied and no changes to the permit or Part B Permit  
19 Application are required.

20 **C APPEAL COMMENT 1-11 BY CBE (WASTE ANALYSIS PLAN)**

21 *The frequency and methodology of “fingerprint testing” for incoming hazardous waste*  
22 *streams should be clarified. DTSC has not stated whether ISOCI has determined if adequate*  
23 *laboratory methodologies are available to quantify all the chemicals listed on Table III of the*  
24 *application. No specific analysis for hexavalent chromium is required even though there is a*  
25 *specific regulatory threshold level for this chemical in 22 CCR § 66261.24.*

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28 <sup>7</sup> Part B Permit Application section III.D may allow case-by-case options for some pre-acceptance physical tests, such as pH or specific gravity, to be conducted at the facility and for some fingerprint testing, such as supplemental chemical analyses, to be conducted off-site.

1 **Analysis of Appeal Comment 1-11**

2 In order to clarify the analysis of this comment, it has been separated into two  
3 subparts.

4 **Comment 1-11a**

5 *The frequency and methodology of “fingerprint testing” for incoming hazardous waste*  
6 *streams should be clarified.*

7 **Response to Comment 1-11a:**

8 This appeal comment is denied as discussed in the following analysis. The frequency  
9 and methodology for waste acceptance screening for incoming waste shipments or “fingerprint  
10 testing” is described in the Part B Permit Application section III.D. with reference to section  
11 III.C.7., Figure III-2, Table III-3 (which refers to Table III-4), and Exhibit III-3. The SCPCAB’s  
12 response to CBE’s permit comment 4-15 summarizes the fingerprint testing process. This is  
13 the inspection and testing required for off-site facilities by California Code of Regulations, title  
14 22, section 66264.13(c) for each movement of hazardous waste received at the facility to  
15 ensure that it matches the identity of the waste designated on the accompanying manifest or  
16 shipping paper.

17 CBE’s permit comment 4-15 and briefing statement for appeal comment 1-11 seem to  
18 confuse the limited scope of fingerprint testing with the more extensive pre-acceptance testing  
19 (“waste profiling”) and with additional testing reported to be performed by some facilities to  
20 occasionally verify the pre-acceptance profiles. CBE’s briefing statement requests that ISOCI  
21 be required to perform a comprehensive chemical analysis on all of the fingerprint samples  
22 that are taken from incoming bulk and containerized hazardous wastes. CBE further requests  
23 that the chemical analysis should cover the parameters described for a “Waste Profile” (under  
24 “Testing Parameters” in Table III-4 of the Part B Permit Application) and include analysis for  
25 the characteristic of reactivity and testing for compatibility. This contradicts with the specific  
26 requirements of California Code of Regulations, title 22, section 66264.13(c) and applicable  
27 USEPA guidance which require only a limited (fingerprint) analysis of each shipment of waste  
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1 to ensure that it matches the identity of the waste on the manifest. Thus CBE's request is not  
2 supported by the applicable regulations.

3 Comment 1-11b

4 *DTSC has not stated whether ISOCI has determined if adequate laboratory*  
5 *methodologies are available to quantify all the chemicals listed on Table III of the application.*  
6 *No specific analysis for hexavalent chromium is required even though there is a specific*  
7 *regulatory threshold level for this chemical in 22 CCR § 66261.24.*

8 Response to Comment 1-11b:

9 This appeal comment is denied as discussed in the following analysis. This appeal  
10 comment and CBE's permit comment 4-16 seem to be concerned that laboratory methods are  
11 not available to quantify all of the chemicals listed on Part B Permit Application Table III-1.  
12 Table III-1 includes specific chemical names in the waste descriptions, for example, various  
13 toxicity characteristic wastes (D-list), cyanide in F007-F012 wastes, 2,6-dichlorophenol in  
14 K043, and discarded products (U-list). It is not clear why CBE is concerned about the  
15 availability of laboratory methods and CBE's appeal briefing statement does not provide  
16 additional information about this appeal comment. CBE's permit comment 4-16 and this  
17 appeal comment do not explain why testing for hexavalent chromium should be required.  
18 Underlying CBE's comment seems to be a concept that there is a requirement to quantify the  
19 concentration of all chemicals received at the facility. However, there is no such requirement.  
20 The SCPCAB's response to permit comment 4-16 describes the waste parameter  
21 requirements for the waste analysis plan to comply with California Code of Regulations, title  
22 22, section 66264.13(a).

23 In response to CBE's apparent concern about the chemicals in the extensive list of  
24 discarded commercial products (the U-list wastes), the Part B Permit Application section III.D.  
25 states, "In the case of off-specification commercial chemicals (listed as U-type waste codes in  
26 Table III-1) the generator may attach an MSDS instead of analysis of a representative  
27 sample." This use of generator "process knowledge," rather than chemical analysis, is  
28 consistent with the USEPA 1994 guidance, section 1.5.

1 Analyses to quantify chemical constituents are primarily required for waste streams  
2 undergoing treatment. As indicated in Part B Permit Application section III.F.1., “At any point  
3 during profiling, or acceptance, or handling procedures, a waste may be designated for  
4 storage and transfer instead of treatment.” There are relatively few chemical concentration  
5 limits for waste acceptance; for example, 1,000 ppm total halogens or 5 ppm PCBs in used oil  
6 and 50 ppm PCBs in any waste. Therefore, chemical analyses to quantify waste constituents  
7 are needed only for certain waste streams and are not required for all chemicals listed on  
8 Table III-1.

9 **Conclusions for Appeal Comment 1-11:**

10 For the reasons discussed in the responses to appeal comments 1-11a and 1-11b,  
11 appeal comment 1-11 is hereby denied and no changes to the permit or Part B Permit  
12 Application are required.

13 **D. APPEAL COMMENT 1-12 BY CBE (WASTE ANALYSIS PLAN)**

14 *DTSC has not identified the adequacy of the detection limits for PCBs and it is unclear*  
15 *why the facility will be allowed to process wastes that contain PCBs with concentrations up to*  
16 *49 ppm.*

17 **Analysis of Appeal Comment 1-12**

18 In order to clarify the analysis of this comment, it has been separated into two  
19 subparts.

20 **Comment 1-12a**

21 *DTSC has not identified the adequacy of the detection limits for PCBs.*

22 **Response to Comment 1-12a:**

23 This appeal comment is denied as discussed in the following analysis. The SCPCAB's  
24 response to permit comment 4-18 and its briefing statement describe the various PCBs  
25 acceptance criteria. ISOCI is not permitted to accept wastes that contain PCBs at or greater  
26  
27  
28

1 than 50 ppm, which are regulated pursuant to the Toxic Substances Control Act (TSCA).<sup>8</sup>  
2 Waste containing PCBs between 5 and 49 ppm may only be managed at the Fuel Blending  
3 Unit, according to permit condition V.(2)r. Also, Part B Permit Application Exhibit III-4, Process  
4 Constituent Limitations, indicates that wastes with PCBs above 2 ppm will not be treated in the  
5 Oil Treatment System.<sup>9</sup> The waste acceptance criteria for PCB's in used oil and other oily  
6 water waste streams is less than 5 ppm.

7 The detection limit for PCBs must be low enough to determine if the PCBs  
8 concentration is below 50 ppm for a waste to be accepted at ISOCI. If the waste is to be  
9 managed anywhere other than the Fuel Blending Unit, ISOCI needs to determine if the PCBs  
10 concentration is less than 5 ppm. If the waste is to be managed in the Oil Treatment System,  
11 then ISOCI must determine if the PCBs concentration is less than 2 ppm.

12 The SCPCAB's briefing statement for appeal comment 1-12 also interprets Part B  
13 Permit Application Table III-3 as identifying a detection limit of 2 ppm for PCBs, which the  
14 SCPCAB asserts is adequate for the comparisons to the used oil and recycled oil criteria.<sup>10</sup> A  
15 more direct statement concerning detection limits is in Part B Permit Application section III.D.4,  
16 Detection Limits of Analytical Method, "Detection limits are specified in USEPA's SW-846.  
17 The detection limits of screening tests will be as provided by the test kit supplier." However,  
18 the Part B Permit Application does not appear to have any list of required detection limits or a  
19 general statement that the chemical analyses used will achieve detection limits below the  
20 specified criteria.

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23 <sup>8</sup> These wastes would have California waste codes 261 (polychlorinated biphenyls and material  
24 containing PCBs) and 731 (liquids with polychlorinated biphenyls  $\geq$  50 mg/l). The permit does not allow  
25 acceptance of these waste codes at ISOCI.

26 <sup>9</sup> Part B Permit Application section IV.B.7. states, "Wastes containing PCB's between concentrations of  
27 2 and 50 ppm which are regulated by the State of California shall not be stored in tanks other than Tank  
28 600 at the facility."

<sup>10</sup> It is not entirely clear what is intended by the "Parameter/Specification" in Table III-3. The values  
appear to be acceptance criteria for identified waste or product streams. The specifications for Total  
Halogenes and PCBs seem to be reversed compared to the way the specifications for Flash Point and  
Metals are constructed. Table III-3 should list the specification for Total Halogenes as less than 1000  
ppm and the specification for PCBs as less than 2 ppm.

1 Part B Permit Application Table III-4 indicates which waste streams require PCBs  
2 testing as part of the Waste Profiling (pre-acceptance) or Fingerprint Analyses. Part B Permit  
3 Application Table III-3 lists the following testing methods for PCBs: USEPA 4020  
4 (immunoassay), USEPA 8080, USEPA 8250, and USEPA 9078 (solid waste). Method 4020 is  
5 an immunoassay test kit procedure with test limits of 5 ppm, 10 ppm, or 50 ppm and is  
6 applicable to soil and non-aqueous liquids. However, the test kit identified in Method 4020 for  
7 non-aqueous liquids appears to be not available. A search on Google did not find any current  
8 manufacturer of test kits for PCBs in waste oil.<sup>11</sup> Permit condition V.(2)s. replaces Method  
9 8080 with Method 8082. Method 8082 is a gas chromatographic method applicable to a  
10 variety of media that can achieve a 2 ppm PCB detection limit. Method 8250 has been deleted  
11 from USEPA's SW-846 test methods guidance. Method 9078 is an electrochemical test kit  
12 that can achieve a 2 ppm PCB detection limit in soil, but it cannot be used for waste oil.  
13 Although some of the methods listed in the approved Part B application regarding PCB testing  
14 are either obsolete or not available, the Part B Permit Application, as modified by permit  
15 condition V.(2) s., does contain some analytical methods (e.g., Method 8082) to meet the  
16 PCBs acceptance criteria at this Facility.

17 CBE's briefing statement also asserts that the Permit is silent on how ISOCI will  
18 manage used oil that contains PCBs at concentrations from 2 ppm to 5 ppm and extrapolates  
19 that the WAP does not address wastes with a PCBs concentration between 2 ppm and 5 ppm.  
20 In particular, see CBE briefing statement footnote 8 on page 11:

21 Because PCBs 'above 2 mg/L will not be treated in the oil treatment system'  
22 (WAP ex. III-4) and wastes that have a PCB concentration between 5 and 49  
23 ppm 'shall only be managed in the Fuel Blending Unit', Permit Special  
24 Condition 2.r., one wonders where wastes that have a PCB concentration  
25 between 2 and 5 ppm will be processed.

26 We would like to point out that liquid wastes containing PCBs less than 5 ppm are not  
27 hazardous wastes under the California and federal regulatory criteria for toxicity. The Soluble  
28 Threshold Limit Concentration (STLC) for PCBs is 5 mg/L. Therefore, there is no general

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<sup>11</sup> Based on our research, we do not believe there are test kits available for determining the concentration of PCBs in waste oil. ISOCI's Part B Permit Application does not specify which PCB test kit they are using.

1 limitation on where wastes containing PCBs concentration of less than 5 ppm can be managed  
2 at this facility based on PCBs content. They just are not acceptable for the Oil Treatment  
3 System, which has acceptance criteria of 2 ppm as specified in Part B Permit Application  
4 Exhibit III-4. Permit condition V.(2)r. does not prevent wastes containing less than 5 ppm  
5 PCBs from being managed at the Fuels Blending Unit<sup>12</sup>. Although not explicitly stated, it is  
6 reasonable to conclude that all treatment units at this facility, other than the Oil Treatment  
7 System, can accept PCBs less than 5 ppm.

8 Based on the foregoing discussion, the Permit Appeals Officer agrees that the  
9 descriptions of procedures related to sampling, testing, detection limits, and management of  
10 wastes containing PCBs could be further streamlined and presented more clearly. However,  
11 we also find that the information within the Part B Permit Application and the permit is  
12 reasonably adequate to manage the wastes containing PCBs in compliance with the  
13 applicable requirements. Thus, this portion of the appeal comment is denied.

14 Comment 1-12b

15 *It is unclear why the facility will be allowed to process wastes that contain PCBs with*  
16 *concentrations up to 49 ppm.*

17 Response to Comment 1-12b:

18 This appeal comment is denied as discussed in the following analysis. As discussed in  
19 the briefing statements from the SCPCAB and ISOCI, wastes that contain PCBs with  
20 concentrations of 50 ppm or more are subject to the TSCA requirements in Code of Federal  
21 Regulations, title 40, part 761. The ISOCI facility does not have a TSCA permit and therefore,  
22 cannot accept PCB waste at or above 50 ppm. However, waste containing PCBs at or above  
23 5 ppm are regulated as hazardous waste under the California Code of Regulations. That is  
24 why the permit condition V.(2)r<sup>13</sup> restricts acceptance and management of waste containing  
25 \_\_\_\_\_

26 <sup>12</sup> ISOCI did not comment on one of the potential impacts of the permit condition V.(2)r. Waste oil or  
27 blended fuel product with PCBs greater than 5 ppm cannot be managed in the container management  
28 areas or the rail car loading/unloading unit. These materials will have to be trucked directly to/from the  
Fuel Blending Unit.

<sup>13</sup> Wastes that contain polychlorinated biphenyls (PCBs) with concentration between 5 to 49 parts per million (ppm)  
shall only be managed at the Fuel Blending Unit. The facility shall not accept any waste containing PCBs with  
concentration of 50 ppm or greater.

1 PCBs between 5 and 49 ppm at the Fuel Blending Unit only. The permit condition II.5., under  
2 the unit description for “RCRA Fuel Blending” states that, “Organic waste containing a BTU  
3 value of 5,000 or higher may be blended to produce RCRA fuels of up to 25,000 gallons/day.  
4 The waste is blended specifically to meet permit requirements for cement kiln and waste  
5 incinerator destruction at offsite facilities.” Therefore it is clear that the waste fuels produced  
6 by this unit will be managed as hazardous waste and sent to properly authorized facilities.  
7 Thus, the Permit Appeals Officer finds that the authorization for management of wastes  
8 containing PCBs between 5 ppm and 49 ppm under the conditions specified in the permit is  
9 consistent with applicable regulations.

10 **Conclusions for Appeal Comment 1-12:**

11 For the reasons discussed in the responses to appeal comments 1-12a and 1-12b,  
12 appeal comment 1-12 is hereby denied.

13 **E. APPEAL COMMENT 1-13 BY CBE (WASTE ANALYSIS PLAN)**

14 *Current operations test for PCBs after commingling, which conflicts with a requirement*  
15 *of the permit, which requires testing before commingling of the waste oil. Conditions to ensure*  
16 *that dilution does not occur should be imposed by DTSC if the facility submits a permit*  
17 *modification request to modify the WAP. DTSC must amend the permit to ensure that PCBs*  
18 *are not introduced or discharged from the facility’s wastewater treatment unit.*

19 **Analysis of Appeal Comment 1-13**

20 In order to clarify the analysis of this comment, it has been separated into three  
21 subparts.

22 **Comment 1-13a**

23 *Current operations test for PCBs after commingling, which conflicts with a requirement*  
24 *of the permit, which requires testing before commingling of the waste oil.*  
25  
26  
27

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1 Response to Comment 1-13a:

2 This appeal comment is denied as discussed in the following analysis. The  
3 descriptions of incoming load shipments in the Part B Permit Application sections III.C. and  
4 III.D. indicate that the fingerprint samples are collected from the incoming bulk load tank or  
5 waste container, not from the facility's receiving tank. This is consistent with permit condition  
6 II.5. Description, "Current Operations, Used Oil Blending and Certification." Other sections of  
7 the Part B Permit Application describing operation of the Oil Treatment System do not  
8 describe the sample collection from facility tanks as part of the waste acceptance procedures.  
9 As indicated by the SCPCAB's appeal briefing statement and response to permit comment  
10 13-8, the incoming load sampling procedure described in the Part B Permit Application and  
11 permit condition II.5. will be controlling once the permit becomes effective. As stated under  
12 the appeal comment 3-1, this Final Order is not changing the testing requirement specified in  
13 permit condition II.5.

14 Comment 1-13b

15 *Conditions to ensure that dilution does not occur should be imposed by DTSC if the*  
16 *facility submits a permit modification request to modify the WAP.*

17 Response to Comment 1-13b:

18 This appeal comment is denied because the comment is not pertinent at this time as it  
19 is applicable only to a possible future permit modification.

20 Comment 1-13c

21 *DTSC must amend the permit to ensure that PCBs are not introduced or discharged*  
22 *from the facility's wastewater treatment unit.*

23 Response to Comment 1-13c:

24 This appeal comment is denied as discussed in the following analysis. Part B Permit  
25 Application Table III-4 indicates that waste streams for the wastewater treatment system  
26 containing greater than 10% oil will be tested for PCBs. However, Part B Permit Application  
27 Exhibit III-4 does not include a process constituent limitation for PCBs for the Waste Water  
28 Treatment System. It should be noted that the description of Wastewater Treatment System in

1 permit condition II.5. states, "The wastewater treatment system shall treat on-site generated  
2 wastewater from the Oil Treatment System, Glycol Recovery System, and the Waste Solids  
3 Treatment Unit, and any off-site generated wastes listed on page 24 of this permit." Pursuant  
4 to permit condition V.(2)r, the only unit allowed to accept PCBs of 5 ppm and above at this  
5 facility is the Fuel Blending Unit, which is not listed as one of the units that can send waste to  
6 the WWTS. Therefore, it is reasonable to conclude that the WWTS influent will not have PCBs  
7 above 5 ppm.

8 In addition, the Soluble Threshold Limit Concentration for PCBs is 5 ppm, so waste  
9 streams with less than 5 ppm PCBs are not hazardous waste due to the PCBs content. Code  
10 of Federal Regulations, title 40, section 761.50(a)(3) states, "No person may discharge water  
11 containing PCBs to a treatment works (as defined §503.9(aa) of this chapter) or to navigable  
12 waters unless the PCB concentration is less than 3 ug/L (approximately 3 ppb), or unless the  
13 discharge is in accordance with a PCB discharge limit included in a permit issued under  
14 section 307(b) or 402 of the Clean Water Act."

15 CBE's appeal comment 1-30 repeats this comment and discusses Clean Water Act  
16 requirements for the Waste Water Treatment System. The Permit Appeals Officer agrees with  
17 CBE that the Wastewater Treatment System (WWTS) will be subject to the Clean Water Act  
18 permitting requirements, implemented by the Los Angeles Bureau of Sanitation (LABS).  
19 ISOCI's briefing statement also concurs with this finding.

20 In addition, permit condition II.5. clearly states that the discharge from the WWTS to  
21 POTW will be under a permit issued by LABS<sup>14</sup>. Furthermore, permit condition III.2.(a) in part  
22 states,

23 The issuance of this Permit by DTSC does not release the Permittee from any  
24 liability or duty imposed by federal or state statutes or regulations or local  
25 ordinances, except the obligation to obtain this Permit. The Permittee shall  
26 obtain the permits required by other governmental agencies, including but not  
27 limited to, the applicable land use planning, zoning, hazardous waste, air  
quality, and solid waste management laws for the construction and/or operation  
of the Facility.

28 <sup>14</sup> II.5., "Wastewater Treatment System...The treatment includes heavy metal removal and  
neutralization of water before discharge to POTW under a permit issued by the City of Los Angeles  
Bureau of Sanitation..."

1 Based on the above discussion, it is reasonable to expect that the LABS permit would  
2 contain a discharge limit for PCBs to comply with the Clean Water Act. The Hazardous Waste  
3 Facility Permit cannot be used as a shield by the facility to avoid compliance with the  
4 applicable requirements of the Clean Water Act or any permits issued by authorized local  
5 agencies in this regard. Also, the PCB concentrations in the influent to the WWTS are  
6 expected to be below 5 ppm, which is the hazardous waste regulatory threshold for this  
7 constituent. Thus, additional amendments to the permit are not necessary.

8 **Conclusions for Appeal Comment 1-13:**

9 For the reasons discussed in the responses to appeal comments 1-13 through 1-13c,  
10 appeal comment 1-13 is hereby denied and no changes to the permit or Part B Permit  
11 Application are required.

12 **F. APPEAL COMMENT 1-16 BY CBE (ACCEPTANCE OF REACTIVE HAZARDOUS WASTE)**

13 *Language ensuring that ISOCI will analyze each shipment of bulk waste for the*  
14 *characteristic of reactivity must be added to both the WAP and to Permit special condition 2.q.*

15 **Analysis of Appeal Comment 1-16**

16 **Response to Comment 1-16:**

17 This appeal comment is denied as discussed in the following analysis. CBE's appeal  
18 comment is concerned with testing RCRA listed waste codes F007, F008, F009, F010, F011  
19 which may be reactive due to cyanides. These wastes were listed due to the fact they exhibit  
20 the characteristics of both toxicity and reactivity. The SCPCAB's appeal briefing statement  
21 refers to Part B Permit Application Table III-3 which references a testing method for reactivity  
22 in USEPA SW-846 Volume 1, Chapter 7 (emission of hydrogen sulfide and hydrogen cyanide).

23 However, as discussed in the RCRA Online, Frequently Asked Questions, Answer ID  
24 426, US EPA removed the guidance threshold levels for cyanide and sulfide bearing wastes  
25 and the laboratory methods from SW-846 Chapter Seven. As is now stated in SW-846  
26 Chapter Seven, section 7.3, "The Agency relies entirely on a descriptive, prose definition of  
27 reactivity because available tests for measuring the variegated class of effects embraced by  
28 the reactivity definition suffer from a number of deficiencies." The descriptive, prose definition

1 of the hazardous waste characteristic of reactivity referred to in SW-846 section 7.3 is in Code  
2 of Federal Regulations, title 40, section 261.24. The corresponding definition is in California  
3 Code of Regulations, title 22, section 66261.23. Generators must use their knowledge of their  
4 waste to determine if their waste exhibits the characteristic of reactivity. The Waste Profile  
5 Form, Exhibit III-1 in the Part B Permit Application, which is used for RCRA wastes requires  
6 the generator to provide information about waste properties that include reactivity.

7 **Conclusions for Appeal Comment 1-16:**

8 For the reasons discussed in the responses above, appeal comment 1-16 is hereby  
9 denied. However, the permit and Part B Permit Application should be revised to remove  
10 references to analytical testing for the reactivity characteristic. Permit condition V.(2)q. is  
11 hereby revised to: "The facility shall not accept any waste that exhibits the characteristic of  
12 reactivity (D003) or any waste that has been identified by the generator in the Waste Profile or  
13 hazardous waste manifest that the waste contains reactive waste."

14 **G. APPEAL COMMENT 1-17 BY CBE (ACCEPTANCE OF REACTIVE HAZARDOUS WASTE)**

15 *Ten percent sampling frequency for containerized waste is insufficient to ensure ISOCI*  
16 *will not be accepting reactive wastes. All containers of waste codes F007–F011 should be*  
17 *sampled and analyzed to ensure none of them exhibit the characteristic of reactivity. Table III-*  
18 *1 of the WAP should be revised to remove any reference to reactivity being allowed for waste*  
19 *codes F007–F011. ISOCI should be expressly prohibited from accepting all waste codes in*  
20 *which reactives may be present.*

21 **Analysis of Appeal Comment 1-17**

22 In order to clarify the analysis of this comment, it has been separated into three  
23 subparts.

24 **Comment 1-17a**

25 *Ten percent sampling frequency for containerized waste is insufficient to ensure ISOCI*  
26 *will not be accepting reactive wastes. All containers of waste codes F007 – F011 should be*  
27 *sampled and analyzed to ensure none of them exhibit the characteristic of reactivity.*

1 Response to Comment 1-17a

2 This appeal comment is denied as discussed in the following analysis. As discussed  
3 for appeal comment 1-16, there are no test methods for the reactivity characteristic. US EPA  
4 relies entirely on a descriptive, prose definition of reactivity in Code of Federal Regulations,  
5 title 40, section 261.24. The corresponding definition of reactivity is in California Code of  
6 Regulations, title 22, section 66261.23. Generators must use their knowledge about their  
7 waste to determine if their waste exhibits the characteristic of reactivity. The Waste Profile  
8 Form, Exhibit III-1 in the Part B Permit Application, which is used for RCRA wastes requires  
9 the generator to provide information about waste properties that include reactivity.

10 Comment 1-17b

11 *Table III-1 of the WAP should be revised to remove any reference to reactivity being*  
12 *allowed for waste codes F007 – F011.*

13 Response to Comment 1-17b:

14 This appeal comment is denied as discussed in the following analysis. The Part B  
15 Permit Application has several inconsistent statements concerning acceptance of reactive  
16 wastes that could be revised or clarified, for example, section VIII.F.(1). However, permit  
17 condition V.(2)q. specifically prohibits acceptance of reactive waste. ISOCI is encouraged to  
18 update its Part B Permit Application for better clarity, consistency and to conform to the  
19 controlling permit condition through an appropriate permit modification process.

20 Comment 1-17c

21 *ISOCI should be expressly prohibited from accepting all waste codes in which*  
22 *reactives may be present.*

23 Response to Comment 1-17c

24 This appeal comment is denied as discussed in the following analysis. The reactivity  
25 characteristic is not based on the presence of reactive chemical constituents, but on the  
26 properties of the waste. CBE's appeal comment is an over-broad restriction. Part B Permit  
27 Application Table III-1 and the permit do not include waste code D003 (reactivity  
28 characteristic) as an acceptable waste and appear to have excluded almost all of the RCRA

1 waste codes which identify the hazard code as reactive. The exceptions are the F007-F011  
2 wastes. The California waste codes do not indicate the basis for listing. Table III-1 includes  
3 waste code 131, "aqueous solution, reactive anions, pH greater than 2 and less than 12.5,"  
4 and waste code 711, "liquids with cyanides greater than or equal to 1000 mg/l." Similarly to  
5 the F007-F011 wastes, the California waste codes 131 and 711 may contain potentially  
6 reactive chemical constituents, but not exhibit the characteristic of reactivity. Thus the request  
7 to prohibit all waste codes in which reactive constituents may be present is without merit.

#### 8 **Conclusions for Appeal Comment 1-17:**

9 For the reasons discussed in the responses to appeal comments 1-17a through 1-17c,  
10 appeal comment 1-17 is hereby denied. However, as stated in the conclusions for appeal  
11 comment 1-16, the permit and Part B Permit Application should be revised to remove  
12 references to analytical testing for the reactivity characteristic. Permit condition V.(2)q. is  
13 hereby revised to: "The facility shall not accept any waste that exhibits the characteristic of  
14 reactivity (D003) or any waste that has been identified by the generator in the Waste Profile or  
15 hazardous waste manifest that the waste contains reactive waste."

#### 16 **H. APPEAL COMMENT 1-20 BY CBE (TRUCK LOADING AND UNLOADING ACTIVITIES)**

17 *DTSC must clarify exactly which hazardous waste management activities will be taking*  
18 *place in the "Truck Loading/Unloading and Storage Area" described in Figure II-4 in the Part B*  
19 *application. If the area is used for storage, this is one more reason secondary containment*  
20 *meeting the regulatory requirements for hazardous waste container storage of California Code*  
21 *of Regulations, title 22, section 66264.175 should be constructed for the area.*

#### 22 **Analysis of Appeal Comment 1-20**

23 In order to clarify the analysis of this comment, it has been separated into two  
24 subparts.

#### 25 **Comment 1-20a**

26 *DTSC must clarify exactly which hazardous waste management activities will be taking*  
27 *place in the "Truck Loading/Unloading and Storage Area" described in Figure II-4 in the Part B*  
28 *application.*

1 Response to Comment 1-20a:

2 This appeal comment is denied as discussed in the following analysis. The activities in  
3 the "Truck Loading/Unloading and Storage Area" shown on Figure II-4 are described in several  
4 locations in the Part B Permit Application Volume IV, Facility Design, such as section  
5 IV.A.(5)c., paragraphs 9 and 10 and section IV.B.(13)c. There are five secondary containment  
6 pads provided for truck loading/unloading related to the container and tank storage areas. The  
7 design for the truck loading/unloading containment pads is shown on Figure IV-8. The  
8 containment pads are designed to contain minor spills which may occur during supervised  
9 loading and unloading operations. The containment pads are not designed to contain a spill of  
10 the entire contents of a tank truck. From section IV.A.(1)c., "Trucks may be parked at the  
11 facility for up to 24 hours while awaiting loading or unloading on truck pads as shown on  
12 Figure II-4." These descriptions are consistent with the SCPCAB's and ISOCI's briefing  
13 statements that this area is used for truck loading and unloading and not for storage longer  
14 than 24 hours. Therefore, the activities and spill containment are consistent with Health and  
15 Safety Code section 25200.19, which governs the loading/unloading operations at a permitted  
16 facility, and no changes to the permit are required.

17 Comment 1-20b

18 *If the area is used for storage, this is one more reason secondary containment meeting*  
19 *the regulatory requirements for hazardous waste container storage of California Code of*  
20 *Regulations, title 22, section 66264.175 should be constructed for the area.*

21 Response to Comment 1-20b:

22 This appeal comment is denied as discussed in the following analysis. The  
23 descriptions of the truck loading and unloading containment pads in section IV of the Part B  
24 Permit Application is consistent with the requirements of Health and Safety Code section  
25 25200.19. Secondary containment meeting the requirements of California Code of  
26 Regulations, title 22, section 66264.175 is not applicable to loading unloading operations  
27 conducted at a permitted facility, provided these operations are conducted in accordance with  
28 the requirements of Health and Safety Code section 25200.19.

1 **Conclusions for Appeal Comment 1-20:**

2 For the reasons discussed in the responses to appeal comments 1-20a and 1-20b,  
3 appeal comment 1-20 is hereby denied and no changes to the permit or Part B Permit  
4 Application are required.

5 **I. APPEAL COMMENT 1-21 BY CBE (TRUCK LOADING AND UNLOADING ACTIVITIES)**

6 *DTSC must add a narrative to the permit that describes both the truck*  
7 *loading/unloading activities and the loading/unloading areas, as other permits do.*

8 **Analysis of Appeal Comment 1-21**

9 **Response to Comment 1-21:**

10 This appeal comment is denied as discussed in the following analysis. Although the  
11 SCPCAB's appeal briefing statement agrees with CBE to add narrative descriptions to the  
12 permit, there appear to be adequate descriptions of truck loading/unloading activities and the  
13 loading/unloading areas in the Part B Permit Application, which is made part of the permit by  
14 reference in sections IV.A.(5)c., IV.B.13.c., VIII.B., and VIII.D., for example. Health and Safety  
15 Code section 25200.19 contains specific restrictions under which loading/unloading activities  
16 can be conducted at a permitted facility.

17 **Conclusions for Appeal Comment 1-21:**

18 For the reasons discussed above, appeal comment 1-21 is hereby denied and no  
19 changes to the permit or Part B Permit Application are required.

20 Although additional clarification regarding how, where, what and when these  
21 operations are conducted may be desirable, we find that the existing descriptions are  
22 reasonably adequate to allow for proper management of loading/unloading at this facility.  
23 Furthermore, the permit appeal process is not the appropriate forum to address issues of  
24 readability or clarity of Part B Permit Applications or permit documents. These activities  
25 should be under taken by the applicant or DTSC pursuant to an appropriate permit  
26 modification process.

1 **J. APPEAL COMMENT 1-22 BY CBE (SEGREGATION OF INCOMPATIBLE WASTES)**

2 *The permit must be amended to include a condition specifying how ISOCI will comply*  
3 *with the requirements of California Code of Regulations, title 22, section 66264.177, which*  
4 *requires segregation of incompatible wastes.*

5 **Analysis of Appeal Comment 1-22**

6 **Response to Comment 1-22:**

7 This appeal comment is denied as discussed in the following analysis. CBE's appeal  
8 comment and briefing statement identifies two concerns regarding ISOCI's compliance with  
9 California Code of Regulations, title 22, section 66264.177(c) for separating containers of  
10 incompatible wastes. First is that the ISOCI facility has a way to separate containers by  
11 means of a dike, berm, wall or other device. Second is that the permit must require ISOCI to  
12 segregate incompatible wastes.

13 CBE references Part B Permit Application section VIII.F.2 for the description of  
14 management of incompatible wastes in containers and says that it is inadequate to determine  
15 compliance with section 66264.177(c). However, the required information is in Part B Permit  
16 Application section IV.A.(4)i.:

17 Three container storage units are located on-site. Two railroad spurs with  
18 secondary containment comprise one container (railroad car) storage unit.  
19 Container Management Area 7 is divided into six areas separated by berms.  
20 This divided area and the other two storage areas in Unit 1 are used to  
21 separate incompatible materials<sup>15</sup>. Figure II-4, located in Section II, shows the  
22 container storage areas located on the facility. Figures IV-4 and IV-39 show the  
23 two container storage units. Secondary containment calculations are presented  
24 in Exhibit IV-1.

25 Section IV.A.(4)i. correctly identifies the two rail spurs as a single containment area,  
26 but only refers to the rail cars themselves as the containers. ISOCI is also allowed to store 55-  
27 gallon drums and similar small containers on rail cars in this area. At any given time, the  
28 wastes in all of the rail tank cars and any small containers stored in rail cars will have to be  
compatible.

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15 Part B Permit Application, Figure IV-39, shows a center aisle berm separating Area 1 and the three bermed units in Area 7. Figure IV-39 also seems to indicate that these units are sloped to drain across the center aisle berm to the sumps in the southeast corners of the four bermed units. This would mean that Areas 1 and 7 have a total of four containment areas, not eight.

1 ISOCI does not identify the compatible waste classes that may be stored in a particular  
2 bermed unit. The Part B Permit Application describes procedures for identifying and  
3 managing incompatible wastes in containers in Waste Characterization sections III.F. and III.J.  
4 and Tables III-3 and III-4; Facility Design sections IV.A.(4) and (5); Management Practices  
5 section VIII.F.; and, Compatibility Testing appendix G. There is no reason to add a new permit  
6 condition specifically to require ISOCI to comply with California Code of Regulations, title 22,  
7 section 66264.177(c).

8 **Conclusions for Appeal Comment 1-22:**

9 For the reasons discussed above appeal comment 1-22 is hereby denied and no  
10 changes to the permit are required.

11 **K. APPEAL COMMENT 1-23 BY CBE (SEGREGATION OF INCOMPATIBLE WASTES)**

12 *DTSC must require ISOCI to demonstrate how the facility will evaluate whether*  
13 *incoming waste is incompatible with other wastes that are being stored at the facility, and*  
14 *include appropriate conditions in the permit to ensure that this evaluation occurs.*

15 **Analysis of Appeal Comment 1-23**

16 **Response to Comment 1-23:**

17 This appeal comment is denied as discussed in the following analysis. CBE's appeal  
18 comment and briefing statement are concerned with waste testing and the decision-making  
19 process to ensure compliance with the incompatible waste segregation requirements in  
20 California Code of Regulations, title 22, section 66264.177(c) for containerized waste. CBE  
21 references Part B Permit Application section IV.A.(4)a., which CBE asserts does not describe  
22 how the facility will evaluate incoming waste shipments to determine compatibility. CBE's  
23 briefing statement proposes that incoming waste shipments should be tested and compared,  
24 in real time, to electronic records of wastes already stored at the facility.

25 The SCPCAB's appeal briefing statement identifies Part B Permit Application section  
26 III.J.3.(b), which says, "The compatibility of containerized waste will be determined for the  
27 purposes of container storage during the acceptance screening process. Reactive materials  
28 will not be accepted at the facility. Acids, caustics, oxidizers, and organic materials will be

1 placed in separated containment areas within the drum storage area at the facility.” This  
2 process is shown on Part B Permit Application Figure III-1, Pre-Acceptance Procedures, which  
3 has a decision box, “ISOCI to determine proper waste handling procedures including  
4 compatible storage area, containers and/or tanks.” Part B Permit Application appendix G  
5 includes a document titled, “Compatible Waste Sets for Storage, Shipment Consolidation and  
6 Blending Potential,” which could be used to identify compatible wastes. Part B Permit  
7 Application section VIII.G., Operating Record, includes the types of information needed to  
8 make correct decisions for segregating containers of incompatible wastes, such as the  
9 composition of each load of waste received and the location of stored waste at the facility.

10 The first step to ensuring that containers containing incompatible wastes are separated  
11 is the waste characterization information gathered during the pre-acceptance waste testing  
12 (profiling) process. This is consistent with California Code of Regulations, title 22, section  
13 66264.13(a). The waste acceptance testing (fingerprinting) upon receipt of the waste  
14 shipment is intended only to ensure the shipment matches the identity of the waste designated  
15 on the accompanying manifest or shipping paper, pursuant to section 66264.13(c). One of the  
16 fingerprint analyses listed on Table III-4 is pH, which is useful for identifying acidic and alkaline  
17 wastes which are potentially incompatible.

18 An electronic operating record may be desirable but is not required to determine what  
19 types of wastes are stored in the separate containment areas. The simpler approach used at  
20 some facilities is to pre-assign compatible waste groups for each containment area and  
21 consistently send only those wastes to those containment area. The ISOCI Part B Permit  
22 Application does not indicate such assignments, although section III.J.3.(b) refers to separate  
23 areas for acids, caustics, oxidizers, and organic materials. Container Management Areas 1  
24 and 7 appear to have four separate bermed units, as shown on Figure IV-39. See discussion  
25 for appeal comment 1-22.

26 **Conclusions for Appeal Comment 1-23:**

27 For the reasons discussed above, appeal comment 1-23 is hereby denied and no  
28 changes to the permit or Part B Permit Application are required.

1 **L. APPEAL COMMENT 1-26 BY CBE (STAGING OF HAZARDOUS WASTE CONTAINERS)**

2 *DTSC must scrutinize ISOCI's hazardous waste container management practices in*  
3 *greater detail and amend the permit to include a description of authorized staging practices for*  
4 *hazardous waste containers.*

5 **Analysis of Appeal Comment 1-26**

6 **Response to Comment 1-26:**

7 This appeal comment is denied as discussed in the following analysis. CBE's permit  
8 comment 4-27 and appeal comment 1-26 assume that container staging activities must be  
9 occurring at ISOCI based on industry practice. CBE refers to two staging practices: 1) during  
10 incoming waste acceptance prior to placement into the permitted unit and 2) for waste  
11 accumulation prior to placement in a process tank.

12 The SCPCAB's response to permit comment 4-27 addresses the incoming waste  
13 acceptance practice, based on Part B Permit Application section III, Waste Characterization.  
14 The SCPCAB's appeal briefing statement more directly addresses the incoming waste practice  
15 by citing permit condition V.(2)v., which says: "The Permittee shall not place hazardous waste  
16 anywhere on the property other than in a permitted unit authorized to accept that particular  
17 hazardous waste." The SCPCAB asserts that the permit does not allow for staging of  
18 hazardous waste containers. ISOCI's briefing statement is not as direct, but says that ISOCI  
19 intends to handle and store any hazardous waste containers in secondary containment areas.

20 Part B Permit Application section VIII.D.(1)(a)2. has the most relevant description  
21 concerning incoming containerized waste.

- 22 2. Containerized waste. Upon receipt and acceptance of a load of  
23 containerized waste, the following procedures will be followed:
- 24 • The facility operator will direct the truck into the appropriate loading  
and unloading areas. He will remain in the area to observe and  
direct the receipt of all containers.
  - 25 • Using a forklift, the staff will off load the drums into container storage  
Unit 1 or Unit 7 for staging.
  - 26 • When all drums have been off-loaded, the operator will present the  
manifest to the driver, after which he will allow the truck to exit the  
27 premises.
  - 28 • The staff using a forklift, will remove drums from the staging area  
and place them into segregated drum storage areas.

1 This procedure indicates that the staging areas for incoming containers are within the  
2 permitted container storage Units 1 and 7. Sampling and analysis of incoming waste  
3 containers prior to off loading from the transport vehicle is also consistent with the descriptions  
4 in Part B Permit Application section III.D. and Figure III-2.

5 The second container staging practice identified by CBE was for accumulation prior to  
6 placement in a process tank. The process descriptions in Part B Permit Application Exhibit IV-  
7 2 for the Oil Treatment System and Fuel Blending describe pumping waste from containers  
8 into process tanks. The descriptions for the Glycol Recovery System, Waste Solids  
9 Treatment, and Container Management Areas No. 1 and No. 7 indicate that there are on-site  
10 process sources of waste glycols, tank bottoms, and solids that are containerized and moved  
11 to other on-site units for treatment or for storage prior to transport off site. Exhibit IV-2 does  
12 not describe the locations for the container emptying, filling, or staging associated with these  
13 processes. The process descriptions in Part IV of the Permit are consistent with Exhibit IV-2  
14 concerning containerized waste. CBE's briefing statement defines staging as, "the practice of  
15 temporarily placing hazardous waste containers outside of permitted areas while the contents  
16 are screened or sampled." Although Exhibit IV-2 does not describe the exact locations for  
17 containerized waste associated with the treatment processes, these activities are part of the  
18 permitted units, which have secondary containment. This is consistent with ISOCI's briefing  
19 statement.

20 **Conclusions for Appeal Comment 1-26:**

21 For the reasons discussed above, appeal comment 1-26 is hereby denied and no  
22 changes to the permit or Part B Permit Application are required.

23 **M. APPEAL COMMENT 1-27 BY CBE (STORAGE TANK ASSESSMENT)**

24 *DTSC must amend the permit to require ISOCI to inspect and certify its tanks every*  
25 *three years by a professional engineer. DTSC has included a special permit condition*  
26 *requiring tank assessment every five years in accordance with the API 653 standard but it*  
27 *does not require that inspection be certified by a professional engineer. DTSC also has not*  
28 *explained the basis for selecting the 5 year interval. The special condition must be revised to*

1 *require certification by a California registered professional engineer with a confined space*  
2 *certification.*

3 **Analysis of Appeal Comment 1-27**

4 In order to clarify the analysis of this comment, it has been separated into four  
5 subparts.

6 **Comment 1-27a**

7 *DTSC must amend the permit to require ISOCI to inspect and certify its tanks every*  
8 *three years by a professional engineer.*

9 **Response to Comment 1-27a**

10 This appeal comment is denied as discussed in the following analysis. CBE's permit  
11 comment 4-23 and appeal comment 1-27 request tank inspections on a three year frequency  
12 because some other storage and treatment facilities inspect every three years and because  
13 ISOCI will be accepting a large number of additional waste codes. CBE's appeal comment  
14 and briefing statement specifically identify storage of corrosive wastes and wastes containing  
15 cyanides. CBE's permit comment 4-23 recognizes that other hazardous waste facilities are  
16 required to assess and recertify their treatment and storage tanks at least every five years.

17 California Code of Regulations, title 22, section 66264.195(e) says, "The frequency of  
18 these assessments shall be based on the material of construction of the tank, type of corrosion  
19 or erosion observed during previous inspections and the characteristics of the waste being  
20 transferred, treated or stored." Also, "The schedule and procedure shall be adequate to detect  
21 cracks, leaks, corrosion or erosion which may lead to cracks or leaks, or wall thinning to less  
22 than the thickness required under section 66264.191(a)." California Code of Regulations, title  
23 22, section 66264.191(a) says, "In reviewing the design of the tank and approving a minimum  
24 thickness, the Department shall rely upon appropriate industrial design standards and other  
25 available information." Therefore, the frequency of the tank assessments is based on waste  
26 characteristics, tank materials and design standards, and observations from previous  
27 inspections.

1 Examining Part B Permit Application Table III-1, Characteristics of Accepted Wastes,  
2 reveals that the vast majority of the additional waste codes, particularly the K- and U-series  
3 wastes are not managed in tanks, only storage in containers. In particular, wastes identified  
4 with the corrosive hazard code (such as D002) are not managed in tanks, except for waste  
5 codes 121, 122, and 123, which are alkaline wastewaters. Similarly, the wastes containing  
6 cyanide (such as F007-F012 and 711) are not managed in tanks, except for waste code 131<sup>16</sup>.  
7 The wastes accepted for storage or treatment in tanks are: waste oils and oily wastes for the  
8 Oil Treatment System; ignitable and high BTU organic liquids for Fuel Blending; wastewaters  
9 for the Waste Water Treatment System; and, waste antifreeze/glycols for the Glycol Recovery  
10 System.

11 Part B Permit Application section IV.B.1. and Table IV-1 indicate that many of the tanks  
12 are designed using the API 650 standard. The SCPCAB's appeal briefing statement indicates  
13 they used the corresponding API 653 standard, "Tank Inspections, Repair, Alteration, and  
14 Reconstruction," to determine the frequency of the tank assessments. This approach is also  
15 stated in Part B Permit Application section IV.B.12.i.1., "At a minimum without earlier indication  
16 of tank deterioration, every five years a tank will be emptied and the interior inspected by a  
17 registered professional engineer for the purpose of determining tank condition according to  
18 API 653, including detecting any cracks, leaks, corrosion, erosion, or wall thinning."<sup>17</sup> ISOCI  
19 also explains the rationale for the tank assessment frequency in Part B Permit Application  
20 section IV.B.12.i.3., "Experience has shown that due to the non corrosive nature of the oily  
21 material managed by ISOCI, that significant deterioration of tank structure does not occur as a  
22 result of storing or treating these oily waste within steel tank systems." Part B Permit  
23 Application section IV.B.6.g., says "The types of wastes managed by ISOCI in tanks in the  
24  
25

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26 <sup>16</sup> Although Part B Permit Application Table III-1 indicates that waste code 131 is treated in tanks,  
27 waste code 131 is not listed in the permit as an accepted waste for any of the tank treatment units.

28 <sup>17</sup> Part B Permit Application section IV.B.12.i.3., "Rationale for frequency of tank inspections," also  
says, "Tanks which will be used to store or treat RCRA waste shall be inspected annually." (See page IV  
– 43 of 65.) RCRA wastes are stored or treated in tanks in Fuel Blending tanks 44, 45, and 600.  
Therefore it is reasonable to assume that these tanks will be inspected annually.

1 facility is compatible with steel used in the construction of the tanks. Perry's Sixth Edition<sup>18</sup>  
2 indicates a corrosion rate for steel of <0.02"/yr at 75° F for similar organics. Experience has  
3 shown the actual corrosion rate to be <0.005"/yr." These evaluations by the SCPCAB and  
4 ISOCI are consistent with the requirements of California Code of Regulations, title 22, section  
5 66264.195(e).

6 CBE's briefing statement does not argue that API Standard 653 is not appropriate or  
7 adequate to meet the requirements of California Code of Regulations, title 22, section  
8 66264.195(e). CBE uses section 66264.192(i)(1) to say that 5 years is a maximum and DTSC  
9 may specify a shorter period. CBE argues 3 years is more health protective and is used in  
10 other permits. ISOCI's briefing also references section 66264.192(i) and the 5 year frequency.  
11 However, it should be noted that section 66264.192(i) applies, by its terms, only to the facilities  
12 specified in section 66264.192(i)(2) and is not, on its face, applicable to ISOCI. In addition,  
13 CBE has not provided any concrete evidence to support its request for a three year testing  
14 frequency. Therefore, the five year testing frequency specified by the SCPCAB is reasonable  
15 and meets the applicable regulatory requirements.

16 Comment 1-27b

17 *DTSC has included a special permit condition requiring tank assessment every five*  
18 *years in accordance with the API 653 standard but it does not require that inspection be*  
19 *certified by a professional engineer.*

20 Response to Comment 1-27b:

21 This appeal comment is denied as discussed in the following analysis. Permit  
22 condition V.(1)a. does not include a requirement that the inspection be certified by a  
23 professional engineer. However, Part B Permit Application section IV.B.12.i.2., says, "The  
24 ultrasonic test reports and visual inspection report will be provided to a California registered  
25 engineer for tank certification." ISOCI's briefing statement does not dispute having a  
26 professional engineer certify the inspection, citing California Code of Regulations, title 22,  
27 \_\_\_\_\_

28 <sup>18</sup> Possibly, "Perry's Chemical Engineers' Handbook," McGraw-Hill. (Table 23-3 "Detailed Corrosion  
Data on Construction Materials," in the Fifth Edition.) See note concerning corrosion resistance tables  
on page 28-28 of Perry's Chemical Engineer's Handbook, Seventh Edition.

1 section 66264.192. The SCPCAB's appeal briefing statement refers to the "Inspector  
2 Qualifications" sections of API 653.<sup>19</sup>

3 Although the permit does not include a requirement for certification of the tank  
4 assessment, the professional engineer's certification is required by California Code of  
5 Regulations, title 22, section 66270.14(a) which says, "Certain technical data, such as design  
6 drawings and specifications, and engineering studies shall be certified by an independent,  
7 qualified professional engineer registered in California." This section applies not only to the  
8 initial submittal of the Part B Permit Application, but also to technical data, design drawings  
9 and specifications, and engineering studies subsequently added to the Part B Permit  
10 Application. Permit condition III.2.(a) requires compliance with applicable requirements of the  
11 California Code of Regulations. Although a special permit condition may be desirable for the  
12 purpose of clarity, it is not necessary.

13 Comment 1-27c

14 *DTSC also has not explained the basis for selecting the 5 year interval.*

15 Response to Comment 1-27c:

16 This appeal comment is denied as discussed in the following analysis. The full  
17 sentence from CBE's appeal comment is, "DTSC has not explained why an assessment of  
18 ISOCI's storage tanks is only required every five years as compared to three years for similar  
19 facilities." CBE's permit comment 4-23 also recognized there are facilities with 5 year  
20 inspection frequencies. The frequency should be based on the tank-specific criteria in  
21 California Code of Regulations, title 22, section 66264.195(e). CBE does not identify the  
22 facilities with permits requiring tank assessments every three years, so there is no basis for  
23 the explanation CBE is requesting. The SCPCAB's response to permit comment 4-23  
24 indicates that special condition V.(1)a., requiring the facility to recertify its tanks once every  
25 five years, is based on California Code of Regulations, title 22, sections 66264.15 and  
26

27  
28 \_\_\_\_\_  
<sup>19</sup> It should be noted that API 653 does not require registration as a professional engineer as a part of the Inspector Qualifications.

1 66264.195(e). Additional explanation for the basis of the 5 year interval is provided in the  
2 SCPCAB's appeal briefing statement.

3 Comment 1-27d

4 *The special condition must be revised to require certification by a California registered*  
5 *professional engineer with a confined space certification.*

6 Response to Comment 1-27d:

7 This appeal comment is denied as discussed in the following analysis. California does  
8 not have a "confined space certification" as part of its registration process for professional  
9 engineers. Confined space regulations are in California Code of Regulations, title 8, section  
10 5156 et seq. administered by Cal/OSHA.

11 **Conclusions for Appeal Comment 1-27:**

12 For the reasons discussed in the responses to appeal comments 1-27a through 1-27d,  
13 appeal comment 1-27 is hereby denied and no changes to the permit or Part B Permit  
14 Application are required.

15 **N. APPEAL COMMENT 1-28 BY CBE (CLOSURE COST ESTIMATES)**

16 *The closure cost estimates for both existing and proposed operations, stated in special*  
17 *condition 1 of the Permit, are insufficient.*

18 **Analysis of Appeal Comment 1-28**

19 Response to Comment 1-28:

20 This appeal comment is denied as discussed in the following analysis. There seems to  
21 be some confusion about the closure cost estimates (CCE) developed by ISOCI and the  
22 SCPCAB for the existing and proposed operations. From the ISOCI prepared Closure Plan,  
23 the CCE for existing operations is \$418,169.00 (2004) and for proposed operations is  
24 \$1,748,240.00 (2004). The Closure Plan CCE for proposed operations includes all of the  
25 facility's units (existing and proposed) described in the Part B Permit Application. The  
26 SCPCAB's CCE in Permit Condition V.(1)b. for existing conditions (operations) is  
27 \$1,458,991.00 (2005). The SCPCAB's CCE in Permit Conditions V.(1)d. for proposed  
28 operations is \$1,595,272.00 (2005) and is the additional amount required for only the newly

1 authorized operations. The SCPCAB total CCE for the entire facility is \$3,054,263.00. The  
2 correct comparison of existing operations CCE is \$418,169.00 (ISOCI) vs. \$1,458,991.00  
3 (SCPCAB); and for the total operations (existing plus proposed) is \$1,748,240.00 (ISOCI) vs.  
4 \$3,054,263.00 (SCPCAB).

5 The SCPCAB's response to permit comment 4-37 incorrectly states that the figure of  
6 \$1,748,240.00 represents the CCE for the existing units in place at the time of permit approval.  
7 This leads to CBE's incorrect evaluation that the CCE for existing units has been reduced in  
8 the permit.

9 CBE comments that the Part B Permit Application cost estimate (\$1,748,240.00) and  
10 the DTSC cost estimate for the proposed units (\$1,595,272.00) are insufficient if the facility  
11 expands to accept hundreds of additional waste codes. CBE does not provide an acceptable  
12 CCE amount or explain why the additional waste codes would necessarily increase the CCE.  
13 The majority of the additional waste codes will be managed in the proposed container storage  
14 units. The primary closure costs associated with the "new" wastes will be the transportation  
15 and disposal costs. The SCPCAB's CCE for container storage areas 1 and 7, with a total of  
16 840 drums, has a transportation cost of \$27,720 (\$33.00 per drum) and disposal cost of \$150  
17 per drum (total \$126,000). These costs appear to be based on transportation to and disposal  
18 at the Kettleman Hills landfill. The costs may be low if the "new" wastes require additional  
19 treatment prior to land disposal or require incineration. However, the containerized waste  
20 disposal costs are a small percentage of the overall CCE.

21 CBE commented that costs have not been included to address the expected amount of  
22 historical contamination. Costs associated with historical contamination will be addressed  
23 through permit condition V.(1)c., which requires amendment of the CCE based on site  
24 investigations conducted pursuant to permit condition V.(2)o.

25 CBE's appeal comments concerning the adequacy of the CostPro software and its  
26 request that the closure cost estimate be supported by actual cost information seem to be  
27 contradicted by CBE's briefing statement which supports the SCPCAB's use of CostPro.

1 **Conclusions for Appeal Comment 1-28:**

2 For the reasons discussed above, appeal comment 1-28 is hereby denied and no  
3 changes to the permit or Part B Permit Application are required. Please also see response to  
4 appeal comment 3-2 for additional discussion of the closure cost estimate.

5 **O. APPEAL COMMENT 1-29 BY CBE (CLOSURE PLAN)**

6 *CBE requests that DTSC require ISOCI to revise the closure plan to list all facilities*  
7 *permitted to handle waste generated during closure of the facility. CBE also requests that the*  
8 *closure plan be revised so that it is consistent with the closure cost estimate.*

9 **Analysis of Appeal Comment 1-29**

10 In order to clarify the analysis of this comment, it has been separated into two  
11 subparts.

12 **Comment 1-29a**

13 *CBE requests that DTSC require ISOCI to revise the closure plan to list all facilities*  
14 *permitted to handle waste generated during closure of the facility.*

15 **Response to Comment 1-29a:**

16 This appeal comment is denied as discussed in the following analysis. The closure  
17 plan requirements for management of waste inventory in California Code of Regulations, title  
18 22, section 66264.112(b)(3) does not include identification of the off-site treatment or disposal  
19 facility. Section 66264.112(b)(3) requires, "identification of the type(s) of the off-site hazardous  
20 waste management units to be used." A letter from Ms. Sylvia K. Lowrance, Director, Office of  
21 Solid Waste, dated May 28, 1993, describes the distinction between the closure plan  
22 requirements in Title 40, Code of Federal Regulations, sections 264.112(b)(3) and  
23 265.112(b)(3). (See RCRA Online document 11748.) Section 264.112(b)(3) is analogous to  
24 California Code of Regulations, title 22, section 66264.112(b)(3). Section 265.112(b)(3) for  
25 interim status facilities requires identification of the specific off-site unit that will be used.  
26 Section 264.112(b)(3) requires identification only of the type of the off-site unit. The  
27 conclusion of the letter is, "In the case of an interim status unit, where closure is imminent, the  
28 owner or operator can reasonably be expected to know the specific destination for the waste,

1 whereas an owner or operator seeking a permit will typically be unable to identify a specific  
2 unit that will be available 10 or more years in the future.” This explanation is consistent with  
3 the SCPCAB’s appeal briefing statement for comment 1-29.

4 CBE’s Appeal Comment 1-29 is particularly concerned with the numerous RCRA F-,  
5 K-, and U-listed waste codes that may not be accepted at Demenno/Kerdoon or U.S. Filter, the  
6 two facilities listed in the Closure Plan. These waste codes are primarily managed as  
7 containerized waste accepted at ISOCI for transfer and not on-site treatment. Off-site disposal  
8 of these wastes during closure is described in Part B Permit Application section XI.A.6.(g).  
9 These wastes are accepted at ISOCI with contracts arranged with the off-site disposal facilities  
10 appropriate for the types of wastes and containers received. This is consistent with the  
11 SCPCAB’s response to permit comment 4-39, which finds that the Closure Plan is in  
12 compliance with California Code of Regulations, title 22, section 66264.112 because all  
13 hazardous wastes will be removed from the facility at the time of closure and sent to a facility  
14 authorized to accept the waste. Thus, no revision to the Closure Plan is necessary pursuant  
15 to this appeal comment.

16 Comment 1-29b

17 *CBE also requests that the closure plan be revised so that it is consistent with the*  
18 *closure cost estimate.*<sup>20</sup>

19 Response to Comment 1-29b:

20 This appeal comment is denied as discussed in the following analysis. The SCPCAB’s  
21 closure cost estimate assumes that 10% of the waste in tanks is sludge (90% is liquid) and  
22 ISOCI’s closure plan (Part B Permit Application section XI.4) and cost estimate assume that  
23 3% of the waste in tanks is sludge (97% is liquid). Both of these values are estimates. The  
24 actual amount of sludge in each waste tank will be discovered when the tanks are emptied  
25 during closure. These percentages do not change the maximum waste quantity (inventory) in  
26 tanks, only the relative quantities of liquid and solids. Because liquid and solid wastes have  
27

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28 <sup>20</sup> In particular, CBE’s appeal comment 1-29 is concerned with consistency between the closure cost estimate and the closure plan for the amount (percentage) of waste in tanks that is solids (sludge).

1 different handling, transportation, and disposal requirements, their closure costs are calculated  
2 separately. The unit costs for solid wastes are higher than liquid wastes, so the SCPCAB's  
3 cost estimate is more conservative compared to ISOCI's estimate for removal of the tank  
4 waste inventory.

5 CBE's appeal comment and appeal briefing statement appear to incorrectly assume  
6 that these solids are waste residues generated during tank decontamination and therefore  
7 ISOCI's lower percentage of solids represents a reduced waste inventory for disposal. The  
8 appeal briefing statement says, "By assuming a 3% sludge content in tanks, ISOCI  
9 underestimated the maximum inventory of hazardous wastes for permit closure purposes."  
10 The appeal comment says, "Therefore, the correct percentage of remaining solids in tanks  
11 which may be generated as hazardous waste during tank decontamination must be stated in  
12 the closure plan." There is no "correct" percentage of solids that needs to be revised in the  
13 closure plan for the sake of consistency with the closure cost estimate. This is not a deficiency  
14 or error in the closure plan. It is only relevant to insuring that the closure cost estimate will be  
15 adequate for disposal of the tank contents, which will include both liquids and solids. Permit  
16 condition V.(1)b. replaces ISOCI's closure cost estimate with DTSC's cost estimate, therefore  
17 ISOCI's assumption of 3% solids in the closure plan is moot.

18 **Conclusions for Appeal Comment 1-29:**

19 For the reasons discussed in the responses to appeal comments 1-29a and 1-29b,  
20 appeal comment 1-29 is hereby denied and no changes to the permit or Part B Permit  
21 Application are required.

22 **P. APPEAL COMMENT 1-30 BY CBE (WASTEWATER TREATMENT SYSTEM)**

23 *The description of waste streams to be treated by the Waste Water Treatment System*  
24 *(WWTS) in the permit is inconsistent with the description in the HRA. "Oil containing liquid*  
25 *waste" is one of the waste streams going to the WWTS, which can include PCBs. DTSC must*  
26 *ensure that PCB's are prevented from entering the WWTS. Based on the waste codes to be*  
27 *accepted by the WWTS, it appears that it should be subject to Clean Water Act requirements*  
28

1 under the definition of “centralized waste treatment facility<sup>21</sup>.” The permit must be amended to  
2 specifically require ISOCI to comply with any applicable pre-treatment standards established  
3 by Clean Water Act regulations.

4 **Analysis of Appeal Comment 1-30**

5 In order to clarify the analysis of this comment, it has been separated into two  
6 subparts.

7 **Comment 1-30a**

8 *The description of waste streams to be treated by the Waste Water Treatment System*  
9 *(WWTS) in the permit is inconsistent with the description in the HRA. “Oil containing liquid*  
10 *waste” is one of the waste streams going to the WWTS, which can include PCBs. DTSC must*  
11 *ensure that PCB’s are prevented from entering the WWTS.*

12 **Response to Comment 1-30a:**

13 This appeal comment is denied as discussed in the following analysis. As discussed in  
14 the response to appeal comment 1-13c, waste streams to the Waste Water Treatment System  
15 (WWTS) are limited by permit condition V.(2)r. to PCB concentrations of less than 5 ppm,  
16 which is also the hazardous waste Soluble Threshold Limit Concentration for PCBs. In  
17 addition, the permit issued by the Los Angeles Bureau of Sanitation (LABS) under the Clean  
18 Water Act is also expected to set influent and effluent constituent concentration limits.

19 The “Final Health Risk Assessment for Industrial Service Oil Company, Inc. Hazardous  
20 Waste Facility Application,” dated December 2006, page 8, describes the wastewater as,  
21 “contaminated with oil, organic compounds and metals.” As discussed in the SCPCAB’s  
22 appeal briefing statement, the narrative description of the wastewater in the permit is not  
23 significantly different from the description in the Health Risk Assessment.<sup>22</sup> The Health Risk  
24 Assessment is part of the Environmental Impact Report prepared for compliance with the  
25 California Environmental Quality Act (CEQA, Public Resources Code, section 21000 et seq.).

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27 <sup>21</sup> See Code of Federal Regulations, title 40, section 437.20, et seq.

28 <sup>22</sup> However, the list of waste codes in the permit is significantly different from the list of waste codes in  
the Health Risk Assessment.

1 CEQA provides a separate judicial appeal process to resolve disputes concerning compliance  
2 with CEQA. This permit appeal is not the proper forum to raise CEQA issues.

3 Comment 1-30b

4 *Based on the waste codes to be accepted by the WWTS, it appears that it should be*  
5 *subject to Clean Water Act requirements under the definition of “centralized waste treatment*  
6 *facility.” See 40CFR437.20, et seq. The permit must be amended to specifically require*  
7 *ISOCI to comply with any applicable pre-treatment standards established by Clean Water Act*  
8 *regulations.*

9 Response to Comment 1-30b:

10 This appeal comment is denied as discussed in the following analysis. It is not clear if  
11 CBE is requesting that DTSC determine that the WWTS meets the definition of a “centralized  
12 waste treatment facility” and place the applicable pre-treatment standards in the permit or  
13 simply require ISOCI to comply with “any applicable pre-treatment standards.” During the  
14 Informal Appeals Conference, in response to a question from the Permit Appeal Officer’s staff,  
15 Ms. Adrienne Bloch of CBE indicated that the permit should require ISOCI to comply with “all  
16 applicable requirements.” DTSC could construct a permit condition to require compliance with  
17 “all applicable pretreatment standards” established by Clean Water Act regulations or the  
18 LABS permit. However, contrary to CBE’s briefing statement, there would be no difference in  
19 the effect of such a permit condition compared to the existing permit condition III.2.(a).

20 Placing specific pre-treatment standards in the permit is also a problem because DTSC  
21 does not have authority or expertise to make these determinations. As discussed in the  
22 SCPCAB and ISOCI briefing statements, the LABS is the agency charged with establishing  
23 pretreatment standards and enforcing the facility’s wastewater discharge permit. If DTSC  
24 placed pretreatment standards in the permit, they could conflict with the LABS permit  
25 conditions and would require a permit modification to change. Thus, it is appropriate to defer  
26 to the proper regulatory authority, which is the LABS in this case, and the permit condition  
27 III.2(a) accomplished this purpose.

1 **Conclusions for Appeal Comment 1-30:**

2 For the reasons discussed in the responses to appeal comments 1-30a and 1-30b,  
3 appeal comment 1-30 is hereby denied.

4 **Q. APPEAL COMMENT 3-1 BY ISOCI (PCB TESTING)**

5 *Petitioner states that the requirement in the draft permit for PCB testing on each truck-*  
6 *to-receiving tank transfer of used oil is unnecessary and establishes a precedent which would*  
7 *pose an obstacle to the routine collection and transportation of used oil in California. Special*  
8 *Condition 2(b) on page 52 of the Final Permit requires that information sheets and waste*  
9 *profile forms shall include results for PCBs for all incoming loads. This requirement should be*  
10 *modified.*

11 **Analysis of Appeal Comment 3-1**

12 In order to clarify the analysis of this comment, it has been separated into two  
13 subparts.

14 **Comment 3-1a**

15 *Petitioner states that the requirement in the draft permit for PCB testing on each truck-*  
16 *to-receiving tank transfer of used oil is unnecessary and establishes a precedent which would*  
17 *pose an obstacle to the routine collection and transportation of used oil in California.*

18 **Response to Comment 3-1a:**

19 This appeal comment is denied as discussed in the following analysis. Permit  
20 condition II.5. Description: "Current Operations, Used Oil Blending and Certification" says in  
21 part, "After inbound shipments of used oil are fingerprint tested to identify the contents of the  
22 shipment, they may be commingled in the designated receiving Tanks 21, 22, 23, 24, 25, 26,  
23 and 27." This permit condition is consistent with descriptions of incoming load shipments in  
24 the Part B Permit Application, sections III.C. and III.D., which indicate that the fingerprint  
25 samples are collected from the bulk load tank or waste container, not from a facility's receiving  
26 tank. Other sections of the Part B Permit Application which describe operation of the Oil  
27 Treatment System do not describe collection of the sample from facility tanks as part of the  
28 waste acceptance procedures. PCB's are listed in Part B Permit Application Table III-4 as a

1 testing parameter for the fingerprint analyses required for the Oil Treatment System. The  
2 completeness and accuracy of information in the Part B Permit Application was certified by Mr.  
3 John Shubin, Jr. and the Part B Permit Application is made part of the permit by reference by  
4 permit condition III.1.(a). If ISOCI wishes to modify the fingerprint sampling procedure for  
5 PCBs analysis in shipments to the Oil Treatment System, then ISOCI may submit a permit  
6 modification request after the effective date of the permit.

7 By way of explanation, there are valid reasons to obtain PCBs results for each  
8 incoming load at the ISOCI facility, prior to commingling with other waste loads in the receiving  
9 tanks. Some of these reasons were discussed in CBE's briefing statement.

10 The concentration of PCBs in the incoming shipments must be known to determine  
11 where the shipment can be managed at the facility in accordance with regulatory  
12 requirements, permit conditions, and the process limitations specified in the Part B Permit  
13 Application. For example, wastes with PCB concentrations between 5 ppm and 49 ppm may  
14 be managed only in the Fuel Blending Unit according to permit condition V.(2)r. Tanks 21, 22,  
15 23, 24, 25, 26 and 27 are part of the Oil Treatment System, which has a process constituent  
16 limitation of less than 2 mg/L PCBs (Part B Permit Application Exhibit III-4). The modified  
17 testing process requested in ISOCI's appeal comment and briefing statement would potentially  
18 allow blending waste oil with PCB concentrations greater than 2 ppm in the Oil Treatment  
19 System tanks.

20 Testing the waste oil from the receiving tanks at the facility after commingling multiple  
21 loads, as proposed by ISOCI, may result in blending (diluting) waste oil with PCB  
22 concentrations of 5 ppm (a hazardous waste for PCBs) or even greater than 50 ppm (a TSCA-  
23 regulated material) without the PCBs being detected. If the resulting mixture in the tank is  
24 below the 2 ppm PCBs criteria for testing the retained samples, then the retained samples  
25 collected from individual shipments would not be tested. In that case, it would not be known if  
26 a shipment had a concentration of PCBs greater than either the 2 ppm permit limit for the Oil  
27 Treatment System, or the 5 ppm regulatory criteria for used oil. Tanks 21, 24, 25, 26 and 27  
28 have permitted capacities of 26,742 gallons and Tanks 22 and 23 have capacities of 29,749

1 gallons. As an example, if individual tank truck loads are 5,000 gallons and are blended in  
2 these tanks until the tanks are full, there will be more than a 5-fold dilution if one of the loads is  
3 contaminated with PCBs and the other truck loads contained no PCBs. If the one truck load  
4 contained PCBs up to 10 ppm, the diluted mixture in the receiving tank would contain less than  
5 2 ppm PCBs, so the retained truck samples would not be tested. By this same reasoning, a  
6 1,000-gallon truck load with 50 ppm PCBs would be diluted in the receiving tank below 2 ppm.  
7 The consequence of blending a PCB contaminated truck load into a receiving tank prior to  
8 determining the PCB concentration is that a much larger volume of waste oil would be  
9 contaminated and require more costly management as waste oil contaminated with PCBs or  
10 as a TSCA regulated material.

11 In addition, not all waste streams are sampled during pre-acceptance profile testing.  
12 Consolidated manifest shipments are an example. The fingerprint test sample for this type of  
13 incoming shipment is the only information about PCB concentration available to determine  
14 where to properly manage the shipment.

15 ISOCI's briefing statement uses the response to comments for the American Oil  
16 Company permit to make its case that sampling the full receiving tank is consistent with the  
17 practices at American Oil Company and DeMenno/Kerdoon (Compton). It should be noted  
18 that the American Oil Company facility is an oil transfer facility, not an oil recycling facility.  
19 American Oil Company only consolidates truck tanker loads into a 7,000 gallon tanker trailer.  
20 Unlike the ISOCI permit, the American Oil Company permit does not have any PCB-  
21 concentration based criteria for placement of incoming shipments into the receiving waste  
22 management unit (the tanker trailer). The full tanker trailer is tested for PCBs content, either  
23 by American Oil Company or by the recycling facility receiving the tanker trailer shipment. If  
24 the PCB concentration from the tanker trailer is above 2 ppm, the samples from the truck  
25 tanker loads retained by American Oil Company are analyzed to determine the source of the  
26 PCBs. If any of the truck tanker loads is contaminated with PCBs of 5 ppm or greater,  
27 American Oil Company only has 7,000 gallons of PCBs contaminated waste oil to dispose of,  
28 not over 26,000 gallons as would be the case for ISOCI's receiving tanks. The

1 DeMenno/Kerdoon (Compton) permit, issued in 2001, allows sampling PCBs in the recycling  
2 facility's receiving tanks in the manner proposed by ISOCI, and thus differs from the ISOCI  
3 permit. In the interest of fairness, DTSC may examine the conditions of the older  
4 DeMenno/Kerdoon (Compton) permit to determine if they are consistent with regulatory  
5 requirements and protective of human health and the environment. If they are not, DTSC may  
6 initiate a permit modification pursuant to California Code of Regulations, title 22, section  
7 66270.41. Although not discussed in the ISOCI's appeal comment or briefing statement, it is  
8 relevant to note that the Evergreen Environmental Inc., located at 6880 Smith Road, Newark,  
9 California, which is a used oil recycling facility like ISOCI, operating under the Hazardous  
10 Waste Facility Permit Number 04-GLN-10, tests all incoming shipments of used oil for PCBs.

11 Comment 3-1b

12 *Special Condition 2(b) on page 52 of the Final Permit requires that information sheets*  
13 *and waste profile forms shall include results for PCBs for all incoming loads. This requirement*  
14 *should be modified.*

15 Response to Comment 3-1b:

16 This appeal comment is granted as discussed in the following analysis. Permit  
17 condition V.(2)b. appears to be a recordkeeping requirement. The results for total halogens  
18 and PCBs from waste profile and fingerprint testing must be recorded on the waste profile form  
19 and sample information sheet for all incoming loads. However, it could be interpreted to  
20 **require** total halogen and PCB testing during waste profiling and fingerprint testing for all  
21 incoming loads.

22 The connection between permit condition V.(2)b. and the Part B Permit Application is  
23 not explained in the SCPCAB's briefing statement. The SCPCAB's response to permit  
24 comment No. 13-8 refers to the Part B Permit Application section III.C.7. and Table III-4. The  
25 SCPCAB's argument is that samples for fingerprint analyses are collected from each bulk load  
26 and container shipment (not from receiving tanks) and Table III-4 lists wastes streams for the  
27 Oil Treatment System, Glycol Recovery System, and Waste Water Treatment System that are  
28 fingerprint tested for PCBs.

1           However, permit condition V.(2)b. requires, by inference, total halogens and PCBs  
2 testing for **all** incoming loads. This is clearly an overbroad requirement. Information  
3 concerning total halogens and PCBs is not required for all waste streams managed at ISOCI  
4 to comply with the waste characterization requirements of California Code of Regulations, title  
5 22, section 66264.13(a). For example, analyses for total halogens and PCBs are not  
6 necessary for the K- and U-series wastes that are managed in containers for storage and  
7 transfer. Permit condition V.(2)b. is inconsistent with the waste characterization process  
8 described in Part B Permit Application, section III and Table III-4. Also, some waste streams,  
9 such as consolidated manifest loads and the U-series wastes are not tested during waste  
10 profiling. In response to a question during the Informal Appeals Conference, the SCPCAB  
11 indicated that only organic waste streams need to be analyzed for PCBs and total halogens.

#### 12 **Conclusions for Appeal Comment 3-1:**

13           For the reasons discussed in the response to appeal comment 3-1a, the portion of  
14 appeal comment 3-1, concerning PCB testing on each truck-to-receiving tank transfer of used  
15 oil, is hereby denied and no changes to the permit or Part B Permit Application are required.

16           For the reasons discussed in the response to appeal comment 3-1b, permit condition  
17 V.(2)b.I. is hereby revised to: "Sample Information Sheets and Waste Profile Forms used to  
18 record incoming waste profile and fingerprint data shall include results for PCBs and/or Total  
19 Halogens for all incoming loads required to be analyzed for PCBs and/or Total Halogens in  
20 accordance with this permit or with Part B Permit Application section III."

#### 21 **R. APPEAL COMMENT 3-2 BY ISOCI (CLOSURE COST ESTIMATE)**

22           *Special Condition 1(b) on page 52 of the Final Permit, the closure cost estimate (CCE),*  
23 *represents an erroneous application of the law. The CCE is based on an actual quote from a*  
24 *third-party contractor. DTSC used one or more software programs to develop its estimate.*

#### 25 **Analysis of Appeal Comment 3-2**

##### 26 **Response to Comment 3-2**

27           This appeal comment is denied as discussed in the following analysis. ISOCI  
28 misinterprets California Code of Regulations, title 22, section 66264.142(a)(2), which says in

1 part, "The closure cost estimate shall be based on the costs to the owner or operator of hiring  
2 a third party to close the facility." Section 66264.142(a) provides instructions for preparing the  
3 closure cost estimate. Subsection (a)(1) provides the overall standard for the closure cost  
4 estimate, which in part states, "...The estimate shall equal the cost of final closure at the point  
5 in the facility's active life when the extent and manner of its operation would make closure the  
6 most expensive, as indicated by its operation plan (see section 66264.112 (b))." Subsection  
7 (a)(2) requires the costs to be based on hiring a third party, because the operator's personnel  
8 and equipment may not be available for closure, for example, if the operator goes out of  
9 business or is bankrupt. Subsections (a)(3) and (a)(4) do not allow the closure cost estimate  
10 to incorporate salvage value for wastes or assets or allow a zero cost for wastes which might  
11 have economic value. These subsections are intended to ensure that the closure cost  
12 estimate and resulting financial assurance amount will be sufficient to pay for the closure and  
13 are not lowered by assumptions about available facility personnel and equipment, asset  
14 salvage value, or waste value which may not exist when the facility is closed.

15 The Permit Appeals Officer disagrees with ISOCI's assertions that section  
16 66261.142(a)(2) requires the closure cost estimate to be based on actual quotes obtained  
17 from a third-party consultant or that preparing a closure cost estimate using a software  
18 program is an erroneous application of law. The Permit Appeals Officer understands the  
19 facility's argument that the actual cost of closure, if implemented by the facility, may be less  
20 than the DTSC estimated closure cost estimate, but it is equally important to note that DTSC  
21 cannot depend on this scenario. Actual experience of DTSC in closing bankrupt or financially  
22 non viable treatment, storage, and disposal facilities (TSDFs) is that the cost of actual closure  
23 when DTSC has to implement it is much higher than any previous estimates<sup>23</sup>. There are  
24 many factors that cause implementation of closure by a third party like DTSC to be more  
25 expensive, including but not limited to, lack of specific knowledge about the wastes that are left  
26  
27

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28 <sup>23</sup> Gibson Environmental Bakersfield and Redwood City facilities.

1 behind. For these reasons, ISOCI's closure cost estimate does not meet the requirements of  
2 California Code of Regulations, title 22, section 66264.142(a).

3 The SCPCAB's use of CostPro software was entirely proper. CostPro software is  
4 USEPA's and DTSC's standard software for estimating closure costs for RCRA regulated  
5 TSDFs. As EPA recently explained, "CostPro has been used by EPA and state regulators  
6 since 1996 to evaluate facility owners' and operators' estimates for closure and post-closure.  
7 RACER (the software that EP Consultants argues should have been used in this case) is  
8 primarily used for corrective action, although it can be adapted for closure and post-closure  
9 purposes." Memorandum from Matthew Hale, Director, EPA Office of Solid Waste to RCRA  
10 Waste Management Directors Regions 1-10 at 2 n.14 (Jan. 30, 2007). For application in  
11 California, DTSC has taken steps to ensure that generic pricing values used in the CostPro  
12 program are consistent with the in-state market. Use of software programs like CostPro  
13 enables the agencies to develop closure cost estimates consistent with the regulatory  
14 mandate, which can then be applied across the regulated industry.

15 ISOCI's comment that the portion of the closure cost estimate for the existing  
16 operations associated with site investigation activities (\$124,000) should be deducted from the  
17 closure cost estimate is also denied. RCRA TSDF owners and operators are required to  
18 demonstrate financial responsibility for corrective action as may be necessary to protect  
19 human health and the environment primarily to ensure adequate funds are available to  
20 undertake the necessary corrective action at the facility in the event, for example, the facility  
21 owners and operators are unable or fail to do so. California Health and Safety Code, section  
22 25200.10(b) requires that "the permit shall contain schedules of compliance for corrective  
23 action and assurances of financial responsibility for completing the corrective action."  
24 Similarly, California Code of Regulations, title 22, section 66264.101(b) says, "The permit or  
25 order will contain schedules of compliance for such corrective action (where such corrective  
26 action cannot be completed prior to issuance of the permit) and assurances of financial  
27 responsibility for completing such corrective action." At permitted TSDFs, financial assurance  
28 requirements for corrective action are imposed through the permit. Therefore, it is proper for

1 the SCPCAB to include the cost of implementing corrective action in the financial responsibility  
2 requirements under the permit.

3 **Conclusions for Appeal Comment 3-2:**

4 For the reasons discussed above, appeal comment 3-2 is hereby denied.

5 **S. APPEAL COMMENT 3-3 BY ISOCI (ANNUAL WASTE PROFILE TESTING)**

6 *Special Condition 2(f) on page 53 of the Final Permit, requiring that all waste profiles*  
7 *shall be analyzed by a certified laboratory on an annual basis. This requirement is*  
8 *unnecessarily burdensome and costly to generators, especially those who conduct auto and*  
9 *truck repair and maintenance services and produce used oil and spent antifreeze.*

10 **Analysis of Appeal Comment 3-3**

11 **Response to Comment 3-3:**

12 This appeal comment is granted as discussed in the following analysis. According to  
13 California Code of Regulations, title 22, section 66264.13(b)(4) the waste analysis plan shall  
14 specify, “the frequency with which the initial analysis of the waste will be reviewed or repeated  
15 to ensure that the analysis is accurate and up to date;” This is to accomplish the requirements  
16 of section 66264.13(a)(4):

- 17 (4) The analysis shall be repeated as necessary to ensure that it is accurate  
18 and up to date. At a minimum, the analysis shall be repeated:  
19 (A) when the owner or operator is notified, or has reason to believe, that the  
20 process or operation generating the hazardous waste, or non-hazardous waste  
21 if applicable under section 66264.13(d), has changed; and  
22 (B) for off-site facilities, when the results of the inspection required in  
23 subsection (a)(5) of this section indicate that the hazardous waste received at  
24 the facility does not match the waste designated on the accompanying manifest  
25 or shipping paper.

26 The “analysis” referred to is the “detailed chemical and physical analysis of a  
27 representative sample of the waste” required by section 66264.13(a)(1). ISOCI, the SCPCAB,  
28 and CBE all refer to the same USEPA guidance, which says, “Although there are no required  
time intervals for re-evaluating wastes, you must develop a schedule for re-evaluating the  
waste on a regular basis.”

1 The SCPCAB's briefing statement says that because ISOCI did not specify a re-  
2 evaluation frequency in its Part B Permit Application, the SCPCAB, using [USEPA waste  
3 analysis plan guidance], determined that one-year intervals would be required for all waste  
4 profiles to be analyzed by a certified laboratory. The SCPCAB used the same rationale in the  
5 response to permit comment 13-25, with the additional comment, "DTSC believes that re-  
6 evaluating waste on an annual basis is essential for determining the wastes that will be  
7 accepted at ISOCI and is not unnecessarily burdensome and costly to generators."

8 However, ISOCI's Part B Permit Application does specify a re-evaluation frequency in  
9 section III.E.1.:

10 The Frequency With Which the Waste Analysis Will Be Repeated or Reviewed  
11 for Accuracy and Timeliness: Each approved waste stream profile will be  
12 reviewed annually and the generator will be required to recertify that there have  
13 been no significant changes in the waste stream or the process generating the  
14 waste. The analysis or information will be reviewed at that time and the waste  
15 will be re-analyzed if the waste analysis on record differs from the re-certified  
16 waste profile information.

17 The waste analysis will be repeated whenever there is a change in the waste-  
18 generating process or if the screening indicates that the waste characteristics  
19 have changed. Waste fingerprint tests for screening and compatibility  
20 assessment will be conducted at the time the waste is received at the facility.

21 The pre-acceptance testing (profiling) is described in Part B Permit Application section  
22 III.D. and generally includes analysis of a representative sample by a California-certified  
23 laboratory. Wastes transported following consolidated manifest, modified manifest, or milk run  
24 variance procedures do not go through pre-acceptance review. Off-specification commercial  
25 chemicals (listed as U-type waste codes) may use an MSDS provided by the generator  
26 instead of analysis of a representative sample.

27 ISOCI's appeal comment requests the permit condition to be reviewed as a matter of  
28 policy, consistency with current ISOCI operations, USEPA guidance, and other recent DTSC  
permit decisions. Permit condition V.(2)f. is not consistent with current ISOCI operations as  
described in Part B Permit Application section III.E.1. but it is the purpose of the special permit  
condition to modify the Part B Permit Application. The Permit Appeals Officer finds that Part B  
Permit Application, section III.E.1., meets the minimum requirements of California Code of

1 Regulations, title 22, section 66264.13(b)(4) and 66264.12(a)(4). ISOCI annually reviews the  
2 waste profile information and requires the generator to recertify the information. Also, the  
3 waste analysis will be repeated whenever there is a change in the waste-generating process  
4 or if the fingerprint screening indicates that the waste characteristics have changed. In  
5 addition, Permit condition V.(2)f. does not appear to be consistent with recent DTSC permit  
6 decisions, for example Advanced Environmental, Inc. (CAT080025711) and Clean Harbors  
7 San Jose, LLC (CAL000191813), which do not include general waste analysis conditions  
8 similar to condition V.(2)f. For these reasons, this condition is deleted from the permit.

9 **Conclusions for Appeal Comment 3-3:**

10 For the reasons discussed above, appeal comment 3-3 is granted and permit condition  
11 V.(2)f. is hereby deleted from the permit. However, it is recommended that ISOCI should  
12 make its annual waste profile review sufficiently rigorous to ensure that the chemical analytical  
13 information on file accurately describes the waste streams it plans to accept under its permit,  
14 pursuant to California Code of Regulations, title 22, section 66264.13(a)(4).

15 **T. APPEAL COMMENT 3-4 BY ISOCI (LOCAL LAND USE PERMIT)**

16 *Special Condition 2(u) on page 57 of the Final Permit states, as a new condition, that*  
17 *“the permit for the proposed units shall not become effective until the applicant is granted a*  
18 *local land used (sic) permit.” It is clearly erroneous for DTSC to impose land use conditions*  
19 *which are not within DTSC’s statutory jurisdiction, and this statement should be stricken from*  
20 *the permit. The first part of the Special Condition, stating that ISOCI shall not begin*  
21 *construction without the required local permits is sufficient to ensure that ISOCI will obtain land*  
22 *use permits as necessary and required by local laws and regulations. ISOCI, located within an*  
23 *M3 “heavy industrial” zone, is permitted by right to conduct various existing and proposed*  
24 *activities.*

25 **Analysis of Appeal Comment 3-4**

26 **Response to Comment 3-4:**

27 DTSC grants the appeal with respect to Comment 3-4 and strikes the following  
28 language in permit condition V.(2)u., “Pursuant to California Health and Safety Code section

1 25199.3(a) the permit for the proposed units shall not become effective until the applicant is  
2 granted a local land use permit.“. Specifically, although DTSC does not opine one way or the  
3 other whether a land use permit is required, DTSC believes that delaying the effectiveness of  
4 a permit under these circumstances which are described below is not appropriate. DTSC  
5 respects the regulatory jurisdiction of other agencies and has included a general requirement,  
6 in permit condition III.2.(a), “...The Permittee shall obtain the permits required by other  
7 governmental agencies, including but not limited to, the applicable land use planning, zoning,  
8 hazardous waste, air quality, and solid waste management laws for the construction and/or  
9 operation of the Facility.” It is clear that DTSC’s permit is not intended to be a shield for the  
10 facility, exempting it from obtaining all other applicable permits. The effect of the permit  
11 including this requirement is that failure to obtain all necessary permits and licenses will  
12 subject the applicant to DTSC enforcement action and, potentially, severe penalties.

13 The Tanner process, Health and Safety Code, section 25199 et seq., establishes a  
14 coordinated approach for a hazardous waste facility permit application by providing a  
15 mechanism for the various state and local governmental agencies to conduct their reviews  
16 while promoting public participation in the process. DTSC acknowledges that whenever  
17 possible, the DTSC permit application process, the California Environmental Quality Act  
18 (CEQA) process, and the Tanner Act process should run simultaneously. Notably, one part of  
19 the process, Health and Safety Code, section 25199.5, allows the applicant to obtain a  
20 statement from the agencies regarding the necessity for specific permits.

21 DTSC acknowledges that it would have been desirable to run the land use permit  
22 process in parallel with DTSC's permit process. However, DTSC lacks the authority to require  
23 the applicant or the City of Los Angeles to proceed with the land use permit process  
24 concurrently with the hazardous waste facility permit process. Issuance of the permit does not  
25 shield the facility from compliance with all applicable regulatory requirements, including local  
26 land use requirements, as stated previously.

27 In the instant matter, the parties to the appeal disagree regarding which permits are  
28 necessary. On one hand, ISOCI offers a 1993 letter from a Los Angeles planning department

1 official stating that existing facilities in that zone are “permitted by right.” On the other hand,  
2 the same entity asserts in a briefing statement that this is incorrect and that a land use permit  
3 is required. The petitioners’ disagreement regarding the need for a land use permit may be  
4 due to the fact that the Tanner process never commenced. Whatever the case, land use  
5 decisions are outside DTSC jurisdiction and the authority to determine compliance with local  
6 requirements is vested in various local agencies, which are duly empowered to consider  
7 issues and applications before them and to bring enforcement actions against those in non-  
8 compliance.

9 DTSC believes the main body of the permit is structured in a way that ensures the  
10 facility acts at its peril if it acts in derogation of local permit requirements. Enforcement actions  
11 for permit violations will be complicated if the permit’s effectiveness is delayed without a clear,  
12 unequivocal indication whether local permits are required such as would have been available  
13 had the Tanner process taken place. Not having that clear indication, it is inappropriate for  
14 DTSC to assume on these facts that a land use permit is required and must defer to the local  
15 agency to decide matters within its jurisdiction, whether by a land use decision for an  
16 application before it or by an enforcement action for non-compliance.

17 Therefore the Permit Appeals Officer finds that the effective date of the permit should  
18 not be stayed when it is not clear if a land use permit is required or not. On the other hand,  
19 permit condition III 2.(a) and modified condition V.(2)u. are adequate to ensure that the facility  
20 cannot construct proposed units without first obtaining necessary land use permits.

21 **Conclusions for Appeal Comment 3-4:**

22 For the reasons discussed above, appeal comment 3-4 is granted. The second  
23 sentence of permit condition V.(2)u., “Pursuant to California Health and Safety Code section  
24 25199.3(a) the permit for the proposed units shall not become effective until the applicant is  
25 granted a local land use permit.” is hereby deleted.

26 **V. ORDER**

27 For the reasons set forth above, the Department grants or partially grants appeal  
28 comments 1-7, 3-1, 3-3, and 3-4.

1 The authorization for operation of the Rail Car Loading and Unloading unit (Rail unit)  
2 granted under permit condition IV is stayed and remanded to the Department's Chief Engineer  
3 or his designee to review and approve in writing an amended engineering certification that  
4 demonstrates that the secondary containment system will operate without overflowing. The  
5 certification process and its impact on authorized levels of operation are described in the  
6 Conclusions for Appeal Comment 1-7, supra, which is incorporated by reference.

7 Appeal comments 1-9, 1-11, 1-12, 1-13, 1-16, 1-17, 1-20, 1-21, 1-22, 1-23, 1-26, 1-27,  
8 1-28, 1-29, 1-30, and 3-2 are denied.

9 Modifications to the permit within the body of this Order are incorporated herein by  
10 reference.

11 The stay of the permit decision is hereby vacated and the permit decision as modified  
12 by this Final Order shall be effective this date.

13  
14 DATE: // original dated June 25, 2008 //

15  
16 // original signed by //

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18 Mohinder S. Sandhu, P.E.  
19 Permit Appeals Officer  
20 Department of Toxic Substances Control  
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