

1 STATE OF CALIFORNIA
2 ENVIRONMENTAL PROTECTION AGENCY
3 DEPARTMENT OF TOXIC SUBSTANCES CONTROL
4

5 In the matter of:) Docket Number: PAT-FY08/09-05
6)
6 SAN JOAQUIN FILTER) ORDER PARTIALLY GRANTING
7 RECYCLING, LLC) PETITION FOR REVIEW, DENIAL
7 14287 E. Manning Avenue) OF REVIEW, AND VACATING STAY
8 Parlier, California 93648)
9)
9 EPA ID. NO. CAL 000 102 751) California Code of Regulations,
10) Title 22, Section 66271.18
11)
12)
_____)

13
14 **I. INTRODUCTION**

15 On December 17, 2008, the Department of Toxic Substances Control's Permit
16 Renewal Team (DTSC) issued a Standardized Hazardous Waste Facility Permit, Series
17 C (Permit) to the San Joaquin Filter Recycling, LLC. ("San Joaquin Filter") hazardous
18 waste storage and transfer facility located at 14287 E. Manning Avenue, Parlier,
19 California (Facility). On January 26, 2009, Mr. Philip Chandler (Petitioner) filed a
20 Petition for Review (Appeal) of the San Joaquin Filter Recycling, LLC, permit decision.
21

22 **II. JURISDICTION**

23 The Department of Toxic Substances Control has jurisdiction over hazardous
24 waste facility permits and the imposition of conditions on such permits pursuant to the
25 California Health and Safety Code sections 25200 et seq., 25186.1(b)(1) and California
26 Code of Regulations, title 22, sections 66270.30, 66271.18.
27
28

1 **III. BACKGROUND**

2 **A. LOCATION AND DESCRIPTION OF THE FACILITY**

3 The location and description of the facility is presented in the Permit as follows:

4
5 The San Joaquin Filter Recycling's facility (Facility) is located at 14287 E
6 Manning Avenue in Parlier, Fresno County, California, (Figure 1) at a
7 Latitude of North 36° 36' 15.9" and a Longitude of West 119° 31' 57.3"
8 (Figure 2). The Facility consists of a 1.12-acre site located 7.1 miles east
of Highway CA-99 on E. Manning Avenue between S. Newmark and
S. Mendocino Avenues.

9 The Facility is unmanned. The Permittee transfers and stores used oil,
10 waste antifreeze, and oily water (non-RCRA hazardous wastes) at the
11 Facility. The Facility uses two vertical tanks and one United States
12 Department of Transportation (DOT)-compliant roll-off bin. One tank has
13 a capacity of 24,000 gallons and the other tank has a capacity of 23,000
14 gallons. The total maximum permitted capacity of tank storage is 47,000
15 gallons. The roll-off bin has a maximum permitted capacity of 10.67 cubic
16 yards and is used to store oily waste such as oily absorbent, used
17 personal protective equipment, and oily debris that are generated as a
18 result of daily routine operations, housekeeping, Facility maintenance, and
from the collection at off-site facilities. In addition, the Facility stores oily
water and oily debris that do not pass the paint filter test (EPA Method
9095) in two separate 55-gallon containers.

19 **B. PERMIT DECISION**

20 The Facility submitted a permit renewal application dated January 3, 2007.
21 DTSC prepared a Draft Permit and a Draft Notice of Exemption in compliance with the
22 California Environmental Quality Act (CEQA, Public Resources Code section 21000 et
23 seq.) for the project. On July 15, 2008, DTSC issued a public notice announcing the
24 start of a 45-day public comment period for the Draft Permit. A public meeting was held
25 at the Parlier Community Center on July 29, 2008. The DTSC did not receive oral
26 comments at the public meeting. The public comment period ended at 5:00 p.m. on
27 August 28, 2008. The DTSC received one comment letter from Mr. Philip Chandler,
28 dated August 28, 2008.

1 DTSC issued a Notice of Final Permit Decision dated December 18, 2008, for the
2 Standardized Hazardous Waste Facility Permit, Series C, for the San Joaquin Filter
3 Facility. DTSC's administrative record for this final permit decision included, in part:

- 4 1. Response to Comments document dated December 17, 2008;
- 5 2. Memoranda dated December 17, 2008, from Mr. Alejandro Galdamez to the
6 File for San Joaquin Filter recycling, LLC, listing changes made by DTSC
7 from Draft to Final Permit;
- 8 3. Final CEQA Notice of Exemption; and
- 9 4. Red line/strikeout version of the final permit showing changes from draft to
10 final permit.

11
12 **C. PERMIT APPEAL PROCESS**

13 Pursuant to California Code of Regulations, title 22, section 66271.18(a), the
14 period for filing a petition for review (appeal) of this final Permit decision ended on
15 January 26, 2009. One petition for review was received on January 26, 2009 from
16 Mr. Philip Chandler. On January 29, 2009, the Permit Appeals Officer of the
17 Department of Toxic Substances Control (hereinafter referred to as "Department")
18 issued a letter to Mr. Randy Manser of San Joaquin Filter stating that pursuant to
19 California Code of Regulations, title 22, section 66271.14(b)(2), the entire Permit was
20 stayed until the Department completed its review of the appeal. The Department's
21 review is to determine which, if any, of the issues raised in the appeal meet the criteria
22 for review pursuant to California Code of Regulations, title 22, section 66271.18.

23
24 **IV. STANDARD OF REVIEW**

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

1 issues raised in the petition for review were also raised during the public comment
2 period for the draft permit decision, including the public hearing. In addition, any person
3 who did not file comments or participate in the public hearing on the draft permit may
4 petition the Department for review of the final permit decision, but only with respect to
5 those changes in the final permit decision from the draft permit decision.

6 California Code of Regulations, title 22, section 66271.18(a) also provides, in
7 pertinent part, that:

8
9 The petition shall include a statement of the reasons supporting that
10 review, including a demonstration that any issues being raised were raised
11 during the public comment period (including any public hearing) to the
12 extent required by these regulations and when appropriate, a showing that
13 the condition in question is based on:

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

17 California Code of Regulations, title 22, section 66271.12, specifies the extent to
18 which issues are required to be raised during the public comment period for a draft
19 permit decision. Specifically, this section states that:

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

25 Because Petitioner submitted comments on the draft permit decision during the
26 public comment period, Petitioner has standing to petition for review of any issues
27 raised during the public comment period for the draft permit decision, as well as any
28 issues that pertain to changes from the draft to the final permit decision.

1 **V. DISCUSSION AND FINDINGS**

2 The Department has reviewed the appeal and hereby responds to the arguments
3 and comments presented in the appeal. The Petitioner’s Appeal Comment and the
4 Department’s response are set forth below.

5 **Appeal Comment 1**

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

19 **Response to Appeal Comment 1**

20 The Petitioner has failed to meet the burden to establish that the Department
21 should grant review of this issue pursuant to the criteria set forth in California Code of
22 Regulations, title 22, section 66271.18(a). For this reason, the Department denies the
23 petition for review of this Appeal Comment.

24 Petitioner raised this issue during the draft permit public comment period and
25 DTSC responded as follows:

26 The Department of Toxic Substances Control (DTSC) disagrees that it did
27 not provide the 45-day public comment period as required by regulations.
28 The public comment period began on July 15, 2008 and ended on
August 28, 2008, which was 45 days. DTSC will not re-notice the draft
permit as requested.

1 The administrative record shows that DTSC actually did accept and respond to
2 all of Petitioner's comments. Thus, alleged defects in DTSC's notice regarding the
3 length of the public comment period did not preclude the Petitioner from commenting on
4 the draft permit. Further, there is no indication in the administrative record that an
5 interested party was unable to participate or comment on the draft permit due to the
6 alleged shortened duration of the public comment period provided in DTSC's notice.
7 Finally, Petitioner's request to re-notice the entire permit decision would serve no useful
8 purpose while adding to the cost and delay of issuing the Permit.

9 Denial of review in this instance does not minimize the importance of full
10 compliance with the applicable requirements of California Code of Regulations, title 22,
11 sections 66271.9, 66271.21, and 66260.10, which determine the length of comment
12 periods in the permit decision process. In this case, however, the only comments
13 received on the draft Permit were from the Petitioner. DTSC accepted the comments
14 and responded to them in the Response to Comments dated December 17, 2008.
15 Although DTSC's Notice of the Public Comment Period indicated that all comments
16 were to be postmarked or received by 5:00 p.m. on August 28, 2008, Petitioner has not
17 shown that DTSC actually applied a shortened public comment period. For the
18 aforementioned reasons, review is denied.

19
20 **Appeal Comment 2**

21
22 The permit is described as consisting of Attachment A□, a standardized
23 permit application, dated January 3 2007, which is "...hereby made part of
24 this permit by reference." Only "Attachment A" is provided to the public as
25 part of the review documents. This is an inappropriate and deceptive
26 practice on the part of DTSC. Although DTSC touts transparency, it
27 consistently fails to deliver as part of its permitting practice. This permit
28 notice failed to follow DTSC's expressed policies. (*Non-standard
characters in original*)

1 **Response to Appeal Comment 2**

2 The Petitioner has failed to meet the burden to establish that the Department
3 should grant review of this issue pursuant to the criteria set forth in California Code of
4 Regulations, title 22, section 66271.18(a). For this reason, the Department denies the
5 petition for review of this Appeal Comment.

6 Petitioner raised this issue during the draft permit public comment period and
7 DTSC responded as follows:

8
9 DTSC disagrees with the comment that it is “inappropriate and deceptive
10 practice” in providing only Attachment A to the public as part of the review
11 documents. Attachment A is the Hazardous Waste Facility Permit. Part
12 III.1 of the Permit clearly states that the Standardized Permit Application is
13 made a part of the Permit by reference. DTSC has made the
14 Standardized Permit Application, as well as the draft permit, for review
15 and comment during the public comment so that the public has access to
16 all relevant information that is included in the permit making decision. The
17 draft CEQA Notice of Exemption was also available for review. Members
18 of the public have access to the documents at the repositories identified
19 by DTSC in the public notice. The Notice of the public comment period of
20 the draft permit decision, which is posted on the website, provided the
21 public with information as to where these documents were available for
22 review. None of the details of the draft permit are “concealed” and the
23 entire permit, including incorporated and supporting documents, are
24 available for public review.

25 The commentor also stated that his accessing the Envirostor came up with
26 zero records. That is not true. Many documents, such as the current
27 Hazardous Waste Facility Permit, the draft Hazardous Waste Facility
28 Permit, the fact sheets (English and Spanish), the public notice (English
and Spanish), the Notice of Deficiencies, the Technical Completeness
letter, were posted on Envirostor.

As noted in DTSC’s Response to Comments, the draft permit, Part III,
Condition 1, incorporates the Standardized Permit Application, dated January 3, 2007,
into the Permit by reference. California Code of Regulations, title 22, section
66270.32(e), states that “all permit conditions shall be incorporated either expressly or
by reference.” When a permit application is incorporated by reference in a permit, it

1 becomes a part of the permit and is embodied in the term “permit” as used in the
2 Department’s regulations, including those regulatory provisions that set forth the
3 requirements that must be specified in the permit.

4 With regard to the public availability of documents related to the draft permit
5 decision, the administrative record shows that the draft permit, including the Application,
6 was placed in the information repositories described in the Public Notice. Posting of the
7 administrative record documents on the DTSC web site or in the EnviroStor database is
8 desirable but is not a regulatory requirement. Furthermore, there is no evidence in the
9 record that Petitioner contacted the designated DTSC staff in the Public Notice for help
10 after being unable to access documents on line.

11 In conclusion, the Permit Appeals Officer denies review of Appeal Comment 2.

12 13 **Appeal Comment 3**

14
15 I hereby appeal the Corrective Action section of the Permit because
16 California Code of Regulations, title 22, requires that corrective action be
17 specified in the permit. No schedule of compliance provided in the draft
18 permit and there is no evidence that any form of corrective action
19 mechanism, such as a Corrective Consent Agreement, exists. DTSC is
20 clearly not satisfying the corrective requirements in the applicable statutes
21 and regulations for issuance of this permit.

22 23 **Response to Appeal Comment 3**

24 The Department grants review of this Appeal Comment, the substance of which
25 was raised during the public comment period, for the reasons set forth below.

26 Petitioner raised this issue during the draft permit public comment period and
27 DTSC’s response consisted of the following:

28 San Joaquin Filter Recycling submitted a Phase I Environmental
Assessment which describes any releases that may have occurred at the
facility. Based on this assessment, DTSC has concluded that no

1 corrective action is currently needed at the facility. In the event that
2 corrective action may be needed in the future, the Permit contains a
3 condition and a mechanism for implementing any required corrective
4 action.

5 The administrative record, however, does not, on its face, contain documents
6 supporting DTSC's statement. For this reason, review of this comment is granted.
7

8 Appeal Comment 4

9
10 I hereby appeal the Corrective Action section of the Permit because the
11 AFR for corrective action is required by statute to be included in permits
12 issued by DTSC. Why isn't this addressed? Why isn't the AFR for
13 corrective action addressed in the corrective section of the permit? By its
14 silence on corrective action AFR, it is believed that this permit is
15 inconsistent with and contradictory to the intent of H&SC . 25200.10(b).
16 This section of the H&SC requires that, ***When corrective action cannot
17 be completed prior to issuance of the permit, the permit shall contain
18 schedules of compliance for corrective action and assurances of
19 financial responsibility for completing the corrective action.*** [H&SC
20 . 25200.10(b)] Title 22 states ***That the permit or order [emphasis
21 added] will contain schedules of compliance for such corrective
22 action (where such corrective action cannot be completed prior to
23 issuance of the permit) and assurances of financial responsibility for
24 completing such corrective action.*** [Title 22 CCR . 66264.101(b)] In
25 perusing the consent agreement, it is clear that DTSC has not completely
26 addressed corrective action, since it only finished the RCRA Facility
27 Assessment (RFA) in May 2004,[for a facility that had operated over 20
28 years] just before issuance of the draft permit but has failed to require
corrective action AFR in the permit. Moreover, there appears to be no
schedule of compliance for completion of corrective action in the permit
proper. Note, that no reference is made in the Permit as to whether DTSC
has determined that corrective action is complete---either through
conclusions of an RFA, investigative work under an RFI, or through
implementation of a remedy selected. DTSC is attempting to end run its
obligation to make a clear administrative decision----subject to public
comment and CEQA---on the issue of corrective action. *(Non-standard
characters in original)*

1 **Response to Appeal Comment 4**

2 Review of this comment, the substance of which was raised as Comment 6
3 during the public comment period, is granted because a need for financial assurance
4 requirements is dependent on the outcome of the review of Appeal Comment 3; i.e.,
5 whether corrective action is required at the facility, and the basis for making that
6 determination.

7
8 **Appeal Comment 5**

9
10 I petition that specific construction standards for the secondary
11 containment be included as permit conditions in Section IV. Mere generic
12 reference to the UBC is not sufficient to assure public safety.

13 **Response to Appeal Comment 5**

14 The Petitioner has failed to meet the burden to establish that the Department
15 should grant a review of this issue pursuant to the criteria set forth in California Code of
16 Regulations, title 22, section 66271.18(a). For the reasons stated below, review
17 requested under Appeal Comment 5 is denied.

18 When the issue was raised during the public comment period, DTSC responded
19 that, “(t)he facility, including the secondary containment system, was constructed in
20 accordance with the applicable provisions of the Uniform Building Code.”

21 Attachment A - Part IV of the Permit, Physical Description, provides dimensions
22 of the permitted unit and states that “secondary containment was constructed in
23 accordance with California Code of Regulations, title 22, section 66264.193.” Most
24 importantly, the Petitioner has not met the burden of explaining how reference to the
25 UBC is not sufficient to assure public safety. For these reasons, review of this Appeal
26 Comment is denied.

1 **Appeal Comment 6**

2
3 I petition that a condition be added to Section IV that requires any tanker
4 awaiting unloading to be within a fenced area.

5
6 **Response to Appeal Comment 6**

7 The Department finds that Petitioner does not have standing to raise this issue
8 for the first time in this proceeding and, therefore, the Petition for Review of this Appeal
9 Comment is denied.

10 California Code of Regulations, title 22, section 66271.18(a), provides that those
11 persons who filed comments, or participated in the public hearing, on a draft permit
12 decision, during the public comment period for the draft permit decision, may petition
13 the Department to review any condition of the final permit decision to the extent that the
14 issues raised in the petition for review were also raised during the public comment
15 period for the draft permit decision, including the public hearing.

16 Because this issue was not raised during the public comment period, review of
17 the Appeal Comment is denied.

18
19 **Appeal Comment 7**

20
21 I petition that a condition be added to Section IV to explain specifically
22 how intentional mixing will be recognized.

23
24 **Response to Appeal Comment 7**

25 The Petitioner has failed to meet the burden to establish that the Department
26 should grant a review of this issue pursuant to the criteria set forth in California Code of
27 Regulations, title 22, section 66271.18(a). For this reason, the Department denies
28 review of this Appeal Comment.

1 When petitioner raised the issue in a comment on the draft permit, DTSC
2 responded that “DTSC will thoroughly review the facility’s operating records and
3 manifests to ensure that the Permittee is not intentional mixing used oil with any
4 hazardous waste.”

5 The regulatory approach is supplemented by Part V of the Permit, entitled
6 *Special Conditions*, specifically prohibiting intentional mixing of wastes:

7
8 Part V.1(c). Used oil shall not be intentionally mixed with other hazardous
9 waste, including household hazardous waste and hazardous waste from a
10 conditionally exempt small quantity generator.

11 Part V.12 The Permittee shall not mix different waste streams together in
12 containers, tanks, tanker trailers or tanker trucks.

13 In addition the permit mandates that the Permittee adhere to the following
14 requirements:

15
16 Part V.4. The Permittee shall not conduct any hazardous waste
17 management activities that would require a permit issued under RCRA or
18 a RCRA-equivalent Hazardous Waste Facility Permit issued by DTSC.

19 Part V.6 The Permittee shall maintain an Operating Record at the Facility
20 which documents all hazardous waste activities at the Facility, including
21 the quantities and types of hazardous waste transferred to and from the
22 Facility, the dates of arrival and departure of shipment, and the manifest
23 document numbers.

24 The Petitioner has failed to state reasons tending to show that the regulatory
25 approach of thoroughly reviewing facility records and manifests as a means to detect
26 intentional mixing, in conjunction with special conditions already included in the permit
27 prohibiting intentional mixing of used oil with any hazardous waste and requiring
28 maintenance of a comprehensive Operating Record, constitutes a finding of fact or
conclusion of law which is clearly erroneous, or an exercise of discretion or an important

1 policy consideration which the Department should, in its discretion, review. Thus review
2 of Appeal Comment 7 is denied.

3
4 **Appeal Comment 8**

5
6 I petition that Section IV be modified to eliminate the exemption for testing
7 for PCBs. The existing condition “legalizes” dilution of PCB containing
8 loads with non-PCB containing truckloads.

9 **Response to Appeal Comment 8**

10 The Petitioner has failed to meet the burden to establish that the Department
11 should grant a review of this issue pursuant to the criteria set forth in California Code of
12 Regulations, title 22, section 66271.18(a). The Department denies review of this Appeal
13 Comment.

14 Section IV does not, in fact, contain any such “exemption.” Section V appears to
15 be more pertinent to the subject of testing, though no express “exemption” is stated in
16 this section or any other part of the Permit..

17 When the issue was raised as Comment 16 during the public comment period,
18 DTSC responded that because of technical limitations of field testing and because of
19 the high cost of using an on-site laboratory, it is impractical to require fingerprinting of
20 incoming loads for PCBs. Instead, DTSC asserted, a practical approach with sufficient
21 safeguards has been provided.

22 The Department finds that this approach is an appropriate exercise of discretion
23 in the performance of DTSC’s regulatory function.

24 Petitioner has failed to demonstrate to the Department that the Permit condition
25 in question is based on a finding of fact or conclusion of law that is clearly erroneous, or
26 an exercise of discretion or an important policy consideration which the Department
27 should, in its discretion, review. Therefore, review of Appeal Comment 8 is denied.
28

1 **Appeal Comment 9**

2
3 I petition that a condition be added to Section IV to specify the repairs
4 necessary to maintain the secondary containment. Specifically,
5 something more secure than a simple bead of calk or an even thinner
6 coating must be provided to address any through-going cracks. DTSC
7 must address how such cracks will be recognized and how they will be
8 fixed.

9 **Response to Appeal Comment 9**

10 The Petitioner has failed to meet the burden to establish that the Department
11 should grant a review of this issue pursuant to the criteria set forth in California Code of
12 Regulations, title 22, section 66271.18(a). For this reason, the Department denies
13 review of this Appeal Comment.

14 When the issue was raised during the public comment period, DTSC responded
15 as follows:

16 It is not appropriate for DTSC to pre-proscribe what corrective measures
17 are to be used since corrective measures are performed or applied on a
18 case-by-case basis. For example, if the floor developed a hair-lined crack,
19 it may be as simple as filling the crack and reapplying the chemical
20 resistant coating. A growing gap may call for a different corrective
21 measure which may include replacing the entire concrete slab. It will
22 depend on the situation.

23 It is reasonable to recognize, as DTSC has done, that appropriate corrective
24 action can vary widely when assessing necessary repairs to secondary containment
25 units. Likewise, it is reasonable to recognize that corrective measures for repairing the
26 secondary containment should be conducted on a case-by-case basis and are
27 dependent on the situation. Petitioner has failed to demonstrate that not specifying, in
28 advance, the repairs necessary to maintain the secondary containment constitutes a
finding of fact or conclusion of law which is clearly erroneous, or is an exercise of

1 discretion or an important policy consideration which the Department should, in its
2 discretion, review. Thus, review of Appeal Comment 9 is denied.

4 **VI. ORDER**

5 For the reasons set forth above, the Permit Appeals Officer grants Petitioner
6 Chandler's Petition for Review of Appeal Comments 3 and 4. Appeal Comments 1, 2,
7 5, 6, 7, 8 and 9 are denied.

8 Pursuant to California Code of Regulations, title 22, section 66271.18(c), the
9 Department will issue a public notice to set a briefing schedule for Appeal Comments 3
10 and 4, for which review has been granted. Interested parties will be given an
11 opportunity to file written arguments pertaining to these two appeal comments in
12 accordance with the briefing schedule.

13 The written arguments should include all reasonably available arguments and
14 factual grounds supporting their position, including all supporting material. To assure
15 complete consideration, all supporting materials should be included in full and may not
16 be incorporated by reference, unless they are already part of the administrative record,
17 or consist of State or Federal statutes and regulations, Department or USEPA
18 documents of general applicability, or other generally available reference materials.
19 Additionally, the briefing documents must provide facts showing the technical,
20 regulatory or statutory basis for the requested outcome, and must be accompanied by
21 the data and other reference material that is used to support the argument, including
22 citations to the administrative record.

23 All arguments pertaining to the Appeal Comments that have been granted review
24 must be signed, and filed in writing, received by the date specified in the public notice,
25 and addressed as follows:

26 Mr. Mohinder S. Sandhu, P.E.
27 Permit Appeals Officer
28 Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826

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

3 Pursuant to California Code of Regulations, title 22, section 66271.15(a)(1),
4 contested permit conditions and those conditions that are not severable from contested
5 permit conditions are stayed during the pendency of an appeal. Appeal Comments 3
6 and 4, for which review has been granted, relate to matters that are severable from the
7 other, uncontested conditions in the Permit because the contested matters seek to add
8 corrective action requirements to the Permit without changing operational procedures
9 and requirements. Therefore, the stay shall remain in effect for Part VI, paragraph 2 of
10 the Permit. The stay as to all other provisions of the Permit is hereby vacated and all
11 such provisions of the Permit issued by DTSC on December 17, 2008, shall be fully
12 effective upon issuance of this order. Appeal Comments 3 and 4 shall be resolved by
13 further order after briefing.

14
15 DATED: May 5, 2009

16
17 //original signed by//

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