

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

5 In the Matter of:

6 EVERGREEN OIL, INC.  
7 SANTA MARIA FACILITY  
8 745-A West Betteravia Road  
9 Santa Maria, California 93454

10 EPA ID. NO. CAD 982 446 858  
11

) Docket Number: PAT-FY08/09-06  
) FINAL APPEAL DECISION AND  
) ORDER

) California Code of Regulations,  
) Title 22, Section 66271.18

12  
13 **I. INTRODUCTION**

14 On December 15, 2008, the Department of Toxic Substances Control's Permit  
15 Renewal Team (DTSC) issued a Standardized Hazardous Waste Facility Permit,  
16 Series C (Permit) to the Evergreen Oil, Inc. – Santa Maria (“Evergreen Santa Maria”)  
17 hazardous waste storage and transfer facility located at 745-A West Betteravia Road,  
18 Santa Maria, California (Facility). On January 20, 2009, Mr. Philip Chandler (Petitioner)  
19 filed a Petition for Review (Appeal) of the Evergreen Oil, Inc. - Santa Maria permit  
20 decision.

21 On June 24, 2009, the Permit Appeals Officer of the Department of Toxic  
22 Substances Control (Department) issued an Order “Partially Granting Petition for  
23 Review and Denial of Review” (Docket No.: PAT-FY08/09-06), granting review of  
24 Petitioner’s appeal comments 6, 7, 8 and 10 and denying Appeal Comments 1, 2, 3, 4,  
25 5, 9, 11, 12, 13, 14, 15 and 16. Pursuant to California Code of Regulations, title 22,  
26 section 66271.18(c), the Department established a briefing period that started on  
27 June 29, 2009, and ended on July 31, 2009.  
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## II. JURISDICTION

The Department of Toxic Substances Control has jurisdiction over hazardous waste facility permits and the imposition of conditions on such permits pursuant to the California Health and Safety Code sections 25200 et seq., and California Code of Regulations, title 22, sections 66270.30.

## III. BACKGROUND

### A. LOCATION AND DESCRIPTION OF THE FACILITY

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

The Evergreen Oil, Inc. – Santa Maria facility (Facility) is located at 745-A West Betteravia Road in Santa Maria, Santa Barbara County in California, at latitude 34° 55' 20" N and longitude 120° 26' 30" W. The Facility occupies approximately 4,000 square feet and is about 500 feet north of West Betteravia Road on a five acre property owned by Rosemary V. Engle, Carl W. Engle and the Carl. W. Engle Family Trust.

The Facility is an unmanned hazardous waste storage facility and is locked at all times. Hazardous waste (used oil, waste antifreeze, non-RCRA wastewater) is brought to the Facility in tanker trucks. Only Evergreen Oil, Inc.'s employees, including drivers, are allowed to unload and load hazardous waste at the Facility. Evergreen Oil, Inc.'s operations consist of collecting used oil, waste antifreeze, non-RCRA wastewater, and oil-contaminated solid waste from offsite generators (gas stations, oil changers, auto repair shops, etc.) and consolidating these wastes at the Facility before shipping them to an authorized hazardous waste treatment or disposal facility.

### B. PERMIT DECISION

The Facility submitted a permit renewal application dated December, 2006. DTSC prepared a Draft Permit and a Draft Notice of Exemption in compliance with the California Environmental Quality Act (CEQA, Public Resources Code section 21000 et seq.) for the project. On or about July 2, 2008, DTSC issued a public notice, establishing the public comment period from July 2, 2008, through August 15, 2008, for

1 the Draft Permit and accompanying CEQA document. The public notice also  
2 announced that a public meeting would be held at the Elwin Mussell Senior Center on  
3 July 24, 2008. DTSC received one comment letter from Mr. Philip Chandler, dated  
4 August 15, 2008.

5 On December 15, 2008, DTSC issued a Notice of Final Permit Decision for the  
6 Standardized Hazardous Waste Facility Permit, Series C, for the Evergreen Santa  
7 Maria Facility. DTSC's administrative record for this final permit decision included, in  
8 part:

- 9 1. Response to Comments document dated December 15, 2008;
- 10 2. Memoranda dated December 15, 2008, from Mr. Alfred Wong to the File for  
11 Evergreen Oil, Inc. – Santa Maria, listing the changes made by DTSC from  
12 Draft to Final Permit;
- 13 3. Final CEQA Notice of Exemption; and
- 14 4. Red line/strikeout version of the final permit showing changes from the draft  
15 to final permit.

16 **C. PERMIT APPEAL PROCESS**

17 Pursuant to California Code of Regulations, title 22, section 66271.18,  
18 subdivision (a), the period for filing a petition for review (appeal) of this final Permit  
19 decision ended on January 14, 2009. One petition for review dated January 14, 2009,  
20 was received from Mr. Philip Chandler and the final permit decision was stayed,  
21 pursuant to California Code of Regulations, title 22, section 66271.14, subdivision  
22 (b)(2), pending review of the appeal. The Department's review subsequently  
23 determined which, if any, of the issues raised in the appeal met the criteria for review  
24 pursuant to California Code of Regulations, title 22, section 66271.18.

25 Pursuant to California Code of Regulations, title 22, section 66271.18(c), the  
26 Permit Appeals Officer issued an Order "Partially Granting Petition for Review and  
27 Denial of Review" (Docket No.: PAT-FY08/09-06), on June 24, 2009, granting review for  
28 4 of 16 appeal comments and staying the permit. A public notice was issued

1 establishing a briefing schedule concerning the appeal comments granted review.  
2 Interested persons were invited to submit written arguments pertaining to the issues that  
3 were granted review and, if necessary, to request an Informal Appeals Conference to  
4 present their arguments orally. The appeal briefing period began on June 29, 2009, and  
5 ended on July 31, 2009. One brief was received from DTSC dated July 31, 2009.

#### 6 **IV. STANDARD OF REVIEW**

7 California Code of Regulations, title 22, section 66271.18, subdivision (a),  
8 provides that any person who filed comments, or participated in the public hearing, on a  
9 draft permit decision, during the public comment period for the draft permit decision,  
10 may petition the Department to review any condition of the final permit decision to the  
11 extent that the issues raised in the petition for review were also raised during the public  
12 comment period for the draft permit decision, including the public hearing. In addition,  
13 any person who did not file comments or participate in the public hearing on the draft  
14 permit may petition the Department for review of the final permit decision, but only with  
15 respect to those changes in the final permit decision from the draft permit decision.

16 California Code of Regulations, title 22, sections 66271.18, subdivision (a) also  
17 provides, in pertinent part, that:

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

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

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

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

9 Because Petitioner submitted comments on the draft permit decision during the  
10 public comment period, Petitioner was found to have standing to petition for review of  
11 any issues raised during the public comment period for the draft permit decision, as well  
12 as any issues that pertain to changes from the draft to the final permit decision.

#### 13 **V. DISCUSSION AND FINDINGS**

14 The Department has reviewed the appeal and hereby responds to the arguments  
15 and comments presented in the appeal. The Petitioner's Appeal Comment and the  
16 Department's response are set forth below.

17 As previously stated, no interested person, except DTSC, submitted a briefing  
18 argument regarding the appeal comments that were granted review. DTSC's brief  
19 dated July 31, 2009, responds to Petitioner's appeal comments. This Order will  
20 evaluate the merits of the Appeal in the light of the Petition, applicable authority, the  
21 DTSC briefing arguments, and the administrative record.

#### 22 **Appeal Comment 6**

23 Petitioner's Appeal Comment 6 is reproduced from the petition as follows:

24  
25 I petition that the Corrective Action section, of the Permit, be revised.  
26 California Code of Regulations, title 22, requires that corrective action be  
27 specified in the permit. No schedule of compliance (sic) provided in the  
28 draft permit and there is no evidence that any form of corrective action  
mechanism, such as a Corrective Consent Agreement, exists. DTSC is

1 clearly not satisfying the corrective requirements in the applicable statutes  
2 and regulations for issuance of this permit.

3  
4 **DTSC Argument**

5 DTSC's briefing argument for Appeal Comment 6 is reproduced, in pertinent part,  
6 as follows:

7  
8 Evergreen Oil submitted a Phase I Assessment to DTSC on March 31,  
9 1994, stating that no hazardous waste was released at the Facility. DTSC  
10 approved the Phase I Assessment and issued a Standardized Hazardous  
11 Waste Facility Permit to Evergreen Oil on December 30, 1997. Since  
12 DTSC determined that there was no release of hazardous waste at or  
13 from the Facility, the 1997 permit did not require Evergreen Oil to conduct  
14 corrective action.

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

26  
27 **Response to Appeal Comment 6**

28 Petitioner contends that Title 22 requires that the Permit must specify corrective  
action in the form of a schedule of compliance or a mechanism such as a Corrective  
Action Consent Agreement. The Permit Appeals Officer finds that because no  
corrective action was required at the time the 2008 permit was issued, no specific  
schedule of compliance or other mechanism is required to be included in the Permit.  
The Permit adequately provides that in the event that corrective action becomes  
necessary in the future, the Permittee is required to conduct corrective action pursuant

1 to either a Corrective Action Consent Agreement or an Enforcement Order for  
2 Corrective Action issued by DTSC pursuant to Health and Safety Code sections 25187  
3 and 25200.10. Thus, Appeal Comment 6 is denied.

4 **Appeal Comment 7**

5 Petitioner's Appeal Comment 7 is reproduced from the petition as follows:  
6

7 The AFR for corrective action is required by statute to be included in  
8 permits issued by DTSC. Why is not this addressed? Why isn't the AFR  
9 for corrective action addressed in the corrective (sic) section of the  
10 permit? By its silence on corrective action AFR, it is believed that this  
11 permit is inconsistent with and contradictory to the intent of H&SC  
12 25200.10(b). This section of H&SC requires that, "**When corrective  
13 action cannot be completed prior to issuance of the permit, the  
14 permit shall contain schedules of compliance for corrective action  
15 and assurances of financial responsibility for completing the  
16 corrective action. [H&SC 25200.10(b)]** Title 22 states **That the permit  
17 or order [emphasis added] will contain schedules of compliance for  
18 such corrective action (where such corrective action cannot be  
19 completed prior to issuance of the permit) and assurances of  
20 financial responsibility for completing such corrective action.**" [Title  
21 22 CCR 66264.101(b)] (emphasis in original).

18 **DTSC Argument**

19 DTSC's briefing argument for Appeal Comment 7 is reproduced as follows:  
20

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

1  
2 As the Petitioner pointed out in his Appeal Comment, DTSC uses a  
3 corrective action consent agreement, which is an order on consent, to  
4 implement any required corrective action at a facility. DTSC's corrective  
5 action consent agreement model complies with the requirements of  
6 California Code of Regulations, title 22, section 66270.33. Conditions and  
7 the schedule for compliance in a consent agreement are as enforceable  
8 as conditions in a permit or an enforcement order. The corrective action  
9 activities required by a consent agreement, including the facility  
10 investigation and remedy selection phases, are subject to the California  
11 Environmental Quality Act and DTSC's public participation process. The  
12 signed consent agreements are public records and are posted on DTSC's  
13 website at [www.dtsc.ca.gov](http://www.dtsc.ca.gov). The Team strongly disagrees with the  
14 Petitioner's statement that DTSC was "attempting to end run its obligation  
15 to make a clear administrative decision - subject to public comment and  
16 CEQA - on the issue of corrective action."

#### 17 **Response to Appeal Comment 7**

18 Appeal Comment 7 is denied on the same basis as Appeal Comment 6. The  
19 Permit adequately provides that in the event that corrective action becomes necessary  
20 in the future, the Permittee is required to conduct corrective action pursuant to either a  
21 Corrective Action Consent Agreement or an Enforcement Order for Corrective Action  
22 issued by DTSC pursuant to Health and Safety Code sections 25187 and 25200.10.  
23 Under such circumstances, the Corrective Action Consent Agreement or the  
24 Enforcement Order would include a requirement for assurances for financial  
25 responsibility. For these reasons, Appeal Comment 7 is denied.

#### 26 **Appeal Comment 8**

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

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1 **DTSC Argument**

2 DTSC's briefing argument for Appeal Comment 8 is reproduced, in pertinent part,  
3 as follows:

4  
5 The Petitioner requested that the corrective action portion of the Permit be  
6 rewritten to be specific as to what constitutes the "Facility" for purposes of  
7 corrective action. When this issue was raised during the public comment  
8 period, the Team, in its Response to Comments, pointed out the  
9 regulatory definition of a "hazardous waste facility", and the statutory and  
10 regulatory requirements regarding where corrective action should be  
11 conducted. The Permit Appeals Officer's Order agreed that the statutory  
12 and regulatory requirements for corrective action were accurately (stated)  
13 in the Team's Response to Comments, but stated that "the Department  
14 cannot verify that the cited requirements were applied to this case  
15 because the administrative record, does not, on its face, contain the  
16 necessary documentation." The Team disagrees with this statement in  
17 the Permit Appeals Officer's Order. (text in parens. added.)

18  
19 The regulatory definition of a "hazardous waste facility", and the statutory  
20 and regulatory requirements regarding where corrective action should be  
21 conducted apply to all the hazardous waste facilities. As provided in  
22 California Code of Regulations, title 22, section 66261.10, for the  
23 purposes of implementing corrective action, a hazardous waste facility  
24 includes all contiguous property under the control of the owner or operator  
25 required to implement corrective action. (emphasis added.) In this case, it  
26 means all property under the control of Evergreen Oil.

27  
28 Nevertheless, Health and Safety Code section 25200.10(b) provides that  
"any corrective action required pursuant to this section shall require that  
corrective action be taken beyond the facility boundary where necessary  
to protect human health and safety or the environment." Therefore, the  
area where corrective action may be required is not limited to the  
boundary of the property that is under the control of Evergreen Oil. This  
point has been made clear by the specific citation of Health and Safety  
Code section 25200.10 in Part VI of the Permit which governs corrective  
action.

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1 **Response to Appeal Comment 8**

2 The term "Facility" is specifically defined in the Permit. (See Permit, Part I.,  
3 subparagraph (2).) This definition is consistent with both the Regulatory and Statutory  
4 definitions. The Permit also specifically references Health and Safety Code section  
5 25200.10 in Part VI of the Permit which governs corrective action. Section 25200.10(b)  
6 requires that corrective action be taken beyond the facility boundary where necessary to  
7 protect human health and safety or the environment. Part VI of the Permit also contains  
8 language that reserves DTSC's ability to require that the Permittee perform corrective  
9 action beyond the facility boundary. The Permit states: "Nothing in Part VI of the Permit  
10 shall be construed to limit or otherwise affect the Permittee's liability and obligation to  
11 perform corrective action including corrective action beyond the facility boundary...."  
12 (Permit, Part VI, subparagraph (4)). Accordingly, we find that the Permit does provide  
13 for corrective action across all of the contiguous property, not just that portion carved  
14 out for use by Evergreen. As already explained in the responses to Appeal Comments  
15 6 and 7, when the Department determines that corrective action is necessary, the  
16 Permittee will be required to undertake the corrective action pursuant to either a  
17 Corrective Action Consent Agreement or an Enforcement Order for Corrective Action.  
18 For these reasons, Appeal Comment 8 is denied.

19 **Appeal Comment 10**

20 Petitioner's Appeal Comment 10 is reproduced from the petition as follows:

21  
22 I petition that specific construction standards for the secondary  
23 containment be included as permit conditions in Section IV---since they do  
24 not appear to have been included in the "Application".

25 **DTSC Argument**

26 DTSC's briefing argument for Appeal Comment 10 is reproduced from the brief  
27 as follows:  
28

1 Construction standards are adopted and enforced by local agencies.  
2 Evergreen Oil constructed the Facility and the secondary containment in  
3 accordance with the building permit and other forms of building-related  
4 authorization issued by the City of Santa Maria at the time of construction.  
5 Local agencies adopt their own building standards and codes consistent  
6 with the applicable provisions of the Uniform Building Code and the  
7 California Building Code. According to the City of Santa Maria's website,  
8 the City of Santa Maria enforces the minimum standards found in the  
9 various model or uniform codes as adopted by its City Council. They  
10 include, but are not limited to, the 2007 California Building Code; the 2007  
11 California Plumbing Code; the 2007 California Mechanical Code; the 2007  
12 California Electrical, Code; and the 2007 California Fire Code.

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

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

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

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

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

27 California Code of Regulations, title 22, Section 66264.175(c) provides  
28 that, "The owner or operator shall submit to the Department with the

1 application for a hazardous waste facility permit a written statement signed  
2 by an independent, qualified professional engineer, registered in  
3 California, that indicates that the containment system is suitably designed  
to achieve the requirements of this section.”

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

15  
16 **Response to Appeal Comment 10**

17 The City of Santa Maria has the authority to adopt and enforce construction  
18 standards. In addition, the “Application” included an engineer’s certification attesting to  
19 important aspects of the design of the secondary containment structures. We note that  
20 the Part III.2.a of the Permit states that “Permittee shall obtain permits required by other  
21 governmental agencies ... for the construction and/or operation of the facility.” In the  
22 light of these considerations, the omission from the Permit of the specific construction  
23 standards for the secondary containment is not unreasonable and otherwise is  
24 compliant with applicable statutes and regulations. For the foregoing reasons, Appeal  
25 Comment 10 is denied.

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1 **VI. ORDER**

2 For the reasons set forth above, the Permit Appeals Officer denies Appeal  
3 Comment 6, 7, 8, and 10 and the stay of the conditions of the Permit is hereby vacated.

4 This Order constitutes the Department's final decision regarding the  
5 December 15, 2008, Permit Decision and this Order shall be effective as of this date.

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8 Dated: October 1, 2009

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10 //original signed by// \_\_\_\_\_

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