

January 26, 2009

Mr. Mohinder Sandhu, P.E.
Permit Appeals Officer
Department of Toxic Substances
Control
8800 Cal Center Drive
Sacramento, California 95826-3200

**ADMINISTRATIVE APPEAL OF DECISION
ON APPROVAL OF FINAL HAZARDOUS
WASTE FACILITY PERMIT RENEWAL FOR
SAN JOAQUIN FILTER RECYCLING,
PARLIER, CALIFORNIA**

Dear Mr. Sandhu:

This is a petition for review of the December 17, 2008, decision for approval of an operating permit for the San Joaquin Filter Recycling hazardous waste management facility in Parlier, California.

1. It is noted that DTSC has once again ignored the "...at least 45 days for public comment." The period required by California Code of Regulations, title 22, section 66271.9(b)1). The public comment period was arbitrarily determined by DTSC to end at 5:00 P.M. The regulations do not require just 44 2/3 days but require **no less** than 45 days. As DTSC so frequently states in its own documents, days are assumed to mean calendar days not business days unless other specified in its regulations. DTSC's public notice has therefore mis-represented the time allowed for public comment. Therefore, all provisions in the final permit are being appealed and none of them should be placed in force until after the decision on this appeal is made. The remedy being sought is re-notice and response to my comments that were submitted within the regulatory 45-day period.
2. The permit is described as consisting of Attachment A, a standardized permit application, dated January 3 2007, which is "... hereby made

part of this permit by reference." Only "Attachment A" is provided to the public as part of the review documents. This is an inappropriate and deceptive practice on the part of DTSC. Although DTSC touts transparency, it consistently fails to deliver as part of its permitting practice. This permit notice failed to follow DTSC's expressed policies.

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

4. I hereby appeal the Corrective Action section of the Permit because the AFR for corrective action is required by statute to be included in permits issued by DTSC. Why isn't this addressed? Why isn't the AFR for corrective action addressed in the corrective section of the permit? By its silence on corrective action AFR, it is believed that this permit is inconsistent with and contradictory to the intent of H&SC §25200.10(b). This section of the H&SC requires that, ***When corrective action cannot be completed prior to issuance of the permit, the permit shall contain schedules of compliance for corrective action and assurances of financial responsibility for completing the corrective action.*** [H&SC §25200.10(b)] Title 22 states ***That the permit or order [emphasis added] will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.*** [Title 22 CCR §66264.101(b)] In perusing the consent agreement, it is clear that DTSC has not completely addressed corrective action, since it only finished the RCRA Facility Assessment (RFA) in May 2004, [for a facility that had operated over 20 years] just before issuance of the draft permit but has failed to require corrective action AFR in the permit. Moreover, there appears to be no schedule of compliance for completion of corrective action in the permit

proper. Note, that no reference is made in the Permit as to whether DTSC has determined that corrective action is complete---either through conclusions of an RFA, investigative work under an RFI, or through implementation of a remedy selected. DTSC is attempting to end run its obligation to make a clear administrative decision----subject to public comment and CEQA--- on the issue of corrective action.

5. I petition that specific construction standards for the secondary containment be included as permit conditions in Section IV. Mere generic reference to the UBC is not sufficient to assure public safety.
6. I petition that a condition be added to Section IV that requires any tanker awaiting unloading to be within a fenced area.
7. I petition that a condition be added to Section IV to explain specifically how intentional mixing will be recognized.
8. I petition that Section IV be modified to eliminate the exemption for testing for PCBs. The existing condition "legalizes" dilution of PCB containing loads with non-PCB containing truckloads.
9. I petition that a condition be added to Section IV to specify the repairs necessary to maintain the secondary containment. Specifically, something more secure than a simple bead of calk or an even thinner coating must be provided to address any through-going cracks. DTSC must address how such cracks will be recognized and how they will be fixed.

I petition that this permit be re-noticed and all comments received during a true 45-day comment period be responded to. I further petition that the permittee required to have in place corrective action AFR and include a compliance schedule in the permit before its re-issuance.

If you have questions regarding the foregoing comments please call me at (310) 455-1962.

Sincerely,

Philip Chandler
2615 Marquette
Topanga, CA 90290