OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **AMERICAN EARTH MANAGEMENT, INC. dba American Oil Company**	OTA Case Nos. 18011920, 18011921, 18011922 CDTFA Case IDs: 563269, 730098, 728353

OPINION

Representing the Parties:

For Appellant: Brigitte Kay, Attorney

For Respondent: Jennifer Williams, Attorney

For Office of Tax Appeals: Corin Saxton, Attorney

S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 43301, American Earth Management, Inc. (appellant) appeals a Decision and Recommendation (Decision) by the California Department of Tax and Fee Administration (CDTFA) finding in favor of respondent Department of Toxic Substances Control (DTSC).[1] CDTFA's Decision denies appellant's timely petition for redetermination of a January 18, 2011 Notice of Determination (NOD) for an activity fee of $55,910, and denies appellant's timely petition for redetermination of a March 15, 2013 NOD for an activity fee of $23,001.[2] The first activity fee was asserted in connection with an application for a Resource Conservation and Recovery Act of 1976 (42 U.S.C. section 6901 et seq.) (RCRA) hazardous waste facility permit

[1] Prior to September 16, 2016, the type of activity fees at issue were assessed by the State Board of Equalization (BOE). For ease of reference, when this Opinion refers to acts that occurred before July 1, 2017, "CDTFA" shall refer to BOE.

[2] DTSC conceded an activity fee of $23,849, and CDTFA's Decision deleted this activity fee. As such, the $23,849 activity fee is no longer in dispute.

(full permit)[3] submitted on March 10, 2010, and the second activity fee was asserted in connection with a standardized permit modification request submitted on September 8, 2010.

Appellant waived the right to an oral hearing before the Office of Tax Appeals (OTA);[4] therefore, the matter is being decided based on the written record.

ISSUES

1. Whether adjustments are warranted to the activity fee of $55,910.
2. Whether adjustments are warranted to the activity fee of $23,001.

FACTUAL FINDINGS

1. On December 8, 2006, DTSC issued appellant a "Series C standardized permit," which was effective from January 17, 2007,[5] through January 16, 2017.[6]
2. Appellant initially operated as a hazardous waste transporter in Van Nuys, California. Appellant transported certain hazardous waste in a manner that is not regulated under the federal RCRA. Under its Series C standardized permit, appellant was classified as a "hazardous waste transporter" and was allowed to collect used oil and oil-contaminated solids from offsite generators. Appellant consolidated the waste at its Van Nuys facility before transport to a hazardous waste treatment or disposal facility. During consolidation, appellant was authorized to load and store the used oil in a tanker trailer

[3] The full permit includes all facilities requiring a RCRA permit plus specified non-RCRA activities requiring submission of a RCRA application pursuant to California Code of Regulations, title 2, section 66264.1 et. seq. Thus, the full permit tier allows treatment and storage of RCRA and California-only (non-RCRA) hazardous waste. For ease of analysis, this Opinion does not distinguish between a full permit issued for RCRA waste (informally, full RCRA permit) and a full permit issued for treatment of California non-RCRA hazardous waste requiring a RCRA permit application under California law (informally, full non-RCRA permit).

[4] This matter was initially scheduled for an oral hearing to take place in December 2019, which was rescheduled to February 2020, and then to May 2020, at the parties' request, and postponed due to the COVID-19 pandemic. OTA informed the parties that the hearing could be scheduled to take place electronically. Appellant requested to wait for an in-person hearing. In August 2022, OTA notified the participants that the in-person hearing was scheduled to take place on October 12, 2022; however, the hearing notice mailed to appellant's representative was returned by the post office as undeliverable, and appellant's representative did not respond to OTA's email and voicemail messages.

[5] Although a December 30, 2008 letter from DTSC to appellant identifies an October 19, 2007 effective date, the permit lists an effective date of January 17, 2007.

[6] The Hazardous Waste Control Law (Health & Saf. Code, § 25100 et seq.) requires any person who stores, treats, transfers, or otherwise disposes of hazardous waste as defined therein to obtain a permit or grant of authorization from DTSC. The term "Series C standardized permit" is defined in Health and Safety Code section 25201.6(a)(3).)

parked in a specified area on appellant's premises for purposes of shipment to a permitted used oil transfer or treatment facility. Appellant's Series C standardized permit did not authorize appellant to treat used oil at its facility.

3. Appellant's permit specifically prohibited the transfer or storage of RCRA hazardous waste. Appellant's permit also states that permit modification may be done at the request of appellant or DTSC, and that "[i]f at any time DTSC determines that modification of this Standardized Permit is necessary, DTSC may initiate a modification to this Standardized Permit according to the procedures in California Code of Regulations, title 22, section 66270.41."
4. DTSC sent appellant a letter dated December 30, 2008, stating that DTSC had received a December 24, 2008 letter from appellant, in which appellant indicated it wanted to upgrade its standardized permit from Series C to a Series B.[7] In its December 30, 2008 letter, DTSC also acknowledges receipt of a completed Part A application; the letter further states that in order for DTSC to process appellant's request, appellant must submit a Part B application.
5. According to a May 1, 2009 email from DTSC to appellant, DTSC received an "application" from appellant on March 9, 2009.[8]
6. In an August 3, 2009 internal email, DTSC states that, based on its discussions with appellant on July 31, 2009, appellant wished to treat used oil, which is not authorized under a standardized permit. Therefore, rather than applying for a permit modification (from a standardized Series C permit to a standardized Series B permit, which would increase the amount of waste that appellant may treat from 5,000 to 50,000 gallons per month, but which would not include treatment of any used oil), appellant would need to apply for a "full non-RCRA permit," which is the most regulated tier of the permitting system.
7. In September 2009, appellant emailed DTSC, requesting a link for the "new application" (i.e., the full permit application), and DTSC responded by providing a link and guidance.

[7] Series A, B, or C is the level within a standardized permit, and specifies how much waste can be stored; Series A is highest level and series C is the lowest. (Health & Saf. Code, § 25201.6.)

[8] The March 9, 2009 application is not in the record. According to CDTFA's Decision, the March 9, 2009 application was a Part B permit application.

8. By emails to DTSC on December 10, 2009, and December 20, 2009, appellant submitted unsigned and undated drafts of its Part B application for a full permit. On December 24, 2009, DTSC responded by email informing appellant that the submission was incomplete, and that if DTSC had received it in a formal submission (i.e., on paper and signed), it would have been denied.
9. On March 10, 2010, appellant submitted a signed and dated Part B permit application for a full permit to DTSC.
10. By email sent May 25, 2010, DTSC informed appellant that its application was incomplete, that DTSC was not accepting appellant's application for filing, and that DTSC would not comment on the quality or technical adequacy of the application. DTSC attached to its email an "Administrative Completeness Determination" letter dated May 24, 2010, stating that DTSC determined the application to be incomplete because the Part A application was missing, there was no security plan, there was no inspection plan, and there was no training plan.
11. On July 26, 2010, DTSC sent appellant a letter stating that it received appellant's Part A and Part B permit application for a full permit on March 12, 2010, and on June 24, 2010.[9] DTSC's letter explained that permit applicants have the option of paying a standard permit activity fee or reimbursing DTSC through a cost reimbursement agreement. The letter stated that the activity fee for appellant's application was $55,910, but DTSC would estimate its costs, should appellant choose to enter a cost reimbursement agreement. The letter enclosed a Permit Activity Fee Option Form, which gave appellant the option of paying a permit activity fee of $59,910 or requesting an estimate for DTSC's cost of processing and making a permit determination for the facility.
12. In a response dated August 5, 2010, appellant submitted the Permit Activity Fee Option Form, requesting an estimate for DTSC's cost of processing and making a permit determination.

[9] On appeal, DTSC states that "it is unclear whether DTSC's letter dated July 26, 2010, mistakenly referenced the submission of a Part A application, or whether the letter was accurate, but the Part A application has since been misplaced [if it was submitted to DTSC]."

13. By email sent September 8, 2010, appellant submitted to DTSC a Class 2 and Class 3 standardized permit modification request.[10]

14. By letter dated October 6, 2010, DTSC provided appellant an estimate of $168,736.76 for processing and making a permit determination on appellant's March 10, 2010 Part B application.

15. By letter sent October 14, 2010,[11] appellant informed DTSC that it could not afford the application fee and that it did not want to proceed with the Part B application (i.e., the March 10, 2010 full permit application). In this letter, appellant stated that it wished to remain permitted under a Series C standardized permit and would like to proceed with the modification plans "per our emails on September 9, 2010 and October 12, 2010."[12]

16. By letter dated December 6, 2010, DTSC acknowledged appellant's request to withdraw its full permit application,[13] and notified appellant that it may be liable for an activity fee due to the submission of the full permit application.

17. In a January 12, 2011 email, appellant responded to DTSC's December 6, 2010 letter, and attached a rough draft of the modifications addressed in the letter.

18. On January 18, 2011, CDTFA issued a timely NOD to appellant for an activity fee of $55,910 based on DTSC's determination that appellant submitted a permit application for a Full Permit for a medium storage and treatment facility on March 10, 2010.

19. By email sent January 19, 2011, DTSC stated that appellant's January 12, 2011 submission was missing the technical information required in the Part B application. DTSC also stated that the modification requested could not be processed because it

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[10] A Class 3 permit modification describes the most extensive of three levels of permissible permit modifications (1, 2, and 3). Class 2 permit modifications include changes to management practices and inspection and compliance procedures in order to enable a permittee to respond to common variations in the types and quantities of the wastes managed by the facility, technological advancements, and changes necessary to comply with new regulations (where these changes can be implemented without substantially changing design specifications or management practices). (Cal. Code Regs., tit. 22, § 66270.42(d)(2)(B).) Class 3 permit modifications include modifications which would significantly alter the facility or its operation, such as a greater than 25 percent increase in the facility's storage capacity. (Cal. Code Regs., tit. 22, § 66270.42(d)(2)(C) & Appendix I.)

[11] This letter was attached to an October 14, 2010 email.

[12] Appellant's letter refers to modification plans set forth in an October 12, 2010 email, but this email is not in the record, and DTSC states that it does not have a record of this email. The reference to a September 9, 2010 email appears to refer to an email from appellant dated September 8, 2010.

[13] This letter also addressed appellant's June 1, 2010 Class 1 permit modification request, which is not relevant to this appeal, as well as appellant's September 8, 2010 Class 2 and Class 3 permit modification request.

included the certification of recycled oil, which is not authorized under a standard permit modification and would require a full permit application.

20. By email sent February 7, 2011, DTSC indicated that appellant's treatment of used oil was not eligible for a standardized permit under Health and Safety Code section 25201.6(g)(1), and stated that if appellant wanted a permit to treat used oil, appellant should "submit a new application for a full non-RCRA permit."

21. On February 15, 2011, appellant filed a timely petition for redetermination with CDTFA, disputing the activity fee of $55,910.

22. By email sent April 7, 2011, appellant submitted a Part B permit application for its permit modification request. The email includes, in pertinent part, a request to add five storage tanks with a total 61,000-gallon storage capacity that will be used to store, blend, and recycle used oil at appellant's facility, for purposes of resale to end use consumers. DTSC responded to appellant later that same day citing Health and Safety Code section 25201.6(g)(1) and stating that the proposed onsite treatment of used oil is not eligible for a standardized permit.

23. By email sent October 5, 2011, appellant asked DTSC to identify the fees associated with the modification requests. On the same date, DTSC replied by email stating that for the Class 2 and 3 permit modification requests, appellant needed to submit a revised Part B application and Form 1093A. DTSC stated that after it received the revised applications, it would tell appellant the fee amount and forward this information to CDTFA for billing.

24. On December 1, 2011, appellant met with DTSC, and by letter dated February 17, 2012, DTSC memorialized the meeting's discussions, which concerned the status of appellant's appeal, permit modification request guidance, an explanation of the permit modification process, and the status of appellant's September 8, 2010 and April 7, 2011 permit modification requests.[14] Specifically, DTSC denied the portion of appellant's Class 3 modification seeking to treat used oil on the grounds that treatment of used oil is not authorized under a Standard Permit. DTSC instructed appellant to submit a revised modification request in order to proceed with the other portions of its modification request.

[14] As discussed more below, DTSC determined that appellant's April 7, 2011 Part B application relates to appellant's September 8, 2010 permit modification request.

25. By letter dated March 19, 2012, DTSC acknowledged receipt of a Part B application. DTSC did not identify the date of this permit application, but stated that it was received March 6, 2012. DTSC indicated that it was rejecting appellant's modification request as incomplete.

26. By letter dated May 2, 2012, DTSC acknowledged receipt of appellant's February 29, 2012 revised Part B standardized permit application to convert from Series C to Series B (pertaining to total storage capacity) on March 5, 2012.[15] DTSC stated that the modifications appellant requested in its revised application would require appellant to move from a Series C standardized permit to a Series B standardized permit, and that an activity fee of $23,849 would be assessed. DTSC stated that the activity fee for the standardized permit modification was calculated based on using the Series B standardized permit tier rate for modifications. DTSC enclosed with the letter a Permit Activity Fee Option Form.

27. By letter dated July 3, 2012, DTSC informed appellant that it had not received a completed Permit Activity Fee Option Form and that if it did not receive a completed form by July 31, 2012, appellant would be billed an activity fee of $23,217.60.[16] DTSC also stated that appellant informed DTSC on May 11, 2012 via "verbal communication" that appellant wished to remain in a Series C standardized permit and intended to revise its permit modification request accordingly. DTSC clarified that, should appellant make such a request, it would be treated as a new permit modification request resulting in a new activity fee of $6,354.40.

28. On February 28, 2013, CDTFA issued an NOD to appellant for an activity fee of $23,849, based on DTSC's determination that appellant submitted a request for a Class 3 permit modification from a Series C standardized permit to a Series B standardized permit on February 29, 2012.

29. On March 15, 2013, CDTFA issued an NOD to appellant for an activity fee of $23,001, based on DTSC's determination that appellant submitted a request for a Class 3 permit

[15] This letter appears to refer to the same application acknowledged in DTSC's March 19, 2012 letter, and presumably either the May 2, 2012 letter or the March 19, 2012 letter contained a typo regarding whether the March 2012 date was March 5 or March 6.

[16] It is not clear why this activity fee differs from that identified in the May 2, 2012 letter.

modification from a Series C standardized permit to a Series B standardized permit on September 8, 2010.

30. On March 29, 2013, appellant filed a timely petition for redetermination of the February 28, 2013 NOD. On April 12, 2013, appellant filed a timely petition for redetermination of the March 15, 2013 NOD.

31. On August 11, 2015, CDTFA held an appeals conference regarding appellant's petitions for redetermination, and thereafter requested additional briefing for the parties to address specific questions. On October 5, 2016, CDTFA issued its Decision, which recommended that the activity fee of $23,849 be deleted, based on DTSC's concession that appellant's February 29, 2012 permit modification request was merely a continuation of the September 8, 2010 request. CDTFA otherwise denied appellant's petitions for redetermination.

32. This timely appeal followed.

DISCUSSION

Issue 1: Whether adjustments are warranted to the activity fee of $55,910.

Under the Health and Safety Code, a person who applies for, or requests, a new hazardous waste facilities permit or a Class 2 or Class 3 modification of an existing hazardous waste facilities permit shall reimburse DTSC for the costs incurred by DTSC in processing the application or responding to the request. (Health & Saf. Code, § 25205.7(a)(1)(A), (D).) At all times relevant to these appeals, in lieu of entering into a reimbursement agreement with DTSC, any person who applies for a new permit or a Class 2 or Class 3 permit modification may instead elect to pay a fee, which varies based on the type of permit or permit modification. (Former Health & Saf. Code, § 25205.7(d)(1).)[17] These fees shall be assessed by CDTFA upon application to DTSC, and the fee shall be nonrefundable even if the application is withdrawn or denied. (Former Health & Saf. Code, § 25205.7(d)(2).)

Used oil is generally subject to regulation under RCRA, and the law requires any facility that treats, stores, or disposes of RCRA-covered waste to maintain a full permit with DTSC.

[17] Health and Safety Code 25205.7 was amended by SB 839 effective September 13, 2016, with an April 1, 2016 retroactive date. This amendment eliminated the option of paying an activity fee, and requires permit applicants and permit modification applicants to reimburse DTSC for the costs incurred in processing the application or responding to the request.

(See Health & Saf. Code, § 25250.1(a)(1)(A)(ii).) Used oil which is not subject to regulation under RCRA is subject to regulation under California law, which requires any facility that treats, stores, or disposes of such waste to have a full permit with DTSC. (See Health & Saf. Code, § 25250.1(a)(1)(A)(i).) An application for a full permit is governed by Article 2 of Chapter 20 of DTSC's regulations (Cal. Code Regs., tit. 22, § 66270.1 et seq.) A permit application consists of two parts, Part A and Part B. (Cal. Code Regs., tit. 22, § 66270.1(b).) Any person who is required to have a permit shall complete, sign, and submit a Part A and a Part B permit application to DTSC. (Cal. Code Regs., tit. 22, § 66270.10(a).) DTSC shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. (Cal. Code Regs., tit. 22, § 66270.10(c).) California Code of Regulations, title 22, (Regulation) section 66270.13 specifies the information that applicants must provide in a Part A permit application, and states that all applicants for permits shall provide that information to DTSC using the Part A application form DTSC provides.[18]

Appellant states that it did not submit a Part A application, and argues that the activity fee can only be imposed if both a Part A application and a Part B application are submitted. In response, DTSC contends that an activity fee can be assessed upon submission of a Part B application alone. DTSC argues that the activity fee is due upon application submittal, and the fact than an application is incomplete or deficient does not preclude imposition of the activity fee, but simply means that the missing information must be submitted to DTSC before the application can be approved. DTSC states that the process of receiving an application from initial submission to completion for the issuance of a permit is a process that can take up to two or more years to complete.

DTSC emphasizes that the Part A application is just a summary of the facility description, which includes units and wastes for which a permit is needed, while the Part B application is the main application with detailed information, including the information summarized in the Part A application. DTSC contends that the Part A application is submitted and reviewed because the regulations require it to be submitted, but most of the information needed to process the application is in the Part B application. DTSC argues that Health and Safety Code section 25205.7 was written broadly to apply the fee at the time of submission of the

[18] The regulation states that the applicant shall provide this information "using the Part A application (Application for a Hazardous Waste Permit, Form EPA 8700-23, revised 1/90) form provided by [DTSC]." It is undisputed that DTSC uses Form 1093A as the method for permit applicants to submit a Part A application.

application, rather than at the time of completeness of the application, to allow DTSC to recoup the costs of processing permit applications and permit modification requests.

Initially, OTA considers whether appellant submitted a Part A application for the full permit application. In an October 30, 2015 letter to CDTFA, DTSC stated that it has no record of a Part A application submitted in connection with the March 10, 2010 Part B application. DTSC further stated that it is unclear whether appellant submitted a Part A application, or whether DTSC's July 26, 2010 letter mistakenly referenced the submission of a Part A application.[19] Moreover, DTSC states that it does not have a record or recollection that appellant submitted a Form 1093A (Part A application) with either permit modification request. Thus, the evidence does not show that appellant submitted a Part A application to DTSC.

Hence, the critical inquiry in this appeal is whether submission of a Part B application constitutes an "application" pursuant to former Health and Safety Code section 25205.7(d)(1), such that an activity fee could be assessed upon submission of a Part B application alone. Although former Health and Safety code section 25205.7(d)(2) clarifies that for interim status facilities,[20] the submittal of the application shall be the submittal of the Part B application, no such clarification is made for non-interim status facilities, which suggests that, for non-interim status facilities (such as appellant), the legislature did not intend the submission of a Part B application alone to constitute the submittal of an "application."

Furthermore, DTSC's regulations regarding such permit applications state that an application consists of two parts, Part A and Part B (Cal. Code Regs., tit. 22, § 66270.1(b)), which indicates that the submission of only one of the two parts does not constitute an application.[21] Additionally, DTSC notes that its Permit Writer Instructions state that if the applicant chooses to pay an activity fee, DTSC is to transmit the activity fee to CDTFA "[u]pon receipt of a new or renewal permit application (i.e., the Part A and Part B)," and that in cases where the Part A and Part B portions of the application are submitted on different dates, the date

[19] Nonetheless, based on the July 26, 2010 letter, CDTFA concluded that appellant had submitted a Part A application on June 24, 2010.

[20] A hazardous waste facility in existence on a specified date or on the effective date of any statute or regulation that subjects the facility to the hazardous waste permitting requirements may continue to operate under a grant of interim status pending the review and decision of DTSC on the permit application. (Health & Saf. Code, § 25200.5.)

[21] Similarly, the regulations state that all applicants for permits shall provide the required information to the DTSC using the Part A application form DTSC provides. (Cal. Code Regs., tit. 22, § 66270.13.)

of the application will be the latter of the two dates. Thus, DTSC's public guidance indicates that this activity fee is not imposed until both a Part A application and a Part B application are submitted. This is generally consistent with DTSC's approach in these matters: DTSC did not impose an activity fee upon appellant's formal submission of a March 10, 2010 Part B application, but instead informed appellant in a May 25, 2010 Administrative Completeness Letter that appellant needed to submit a Part A application, and it was only after DTSC mistakenly concluded that it had received a Part A application that DTSC identified an activity fee of $55,910 in its July 26, 2010 letter.

Moreover, Regulation section 66270.1(c) specifies that DTSC shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. Thus, OTA finds unpersuasive DTSC's contention that Health and Safety Code section 25205.7 was written broadly to apply the fee at the time of submission of the application.

With respect to DTSC's argument that the information included in the Part A application is of little importance and is only something DTSC requires because of its regulations, this may be true, but it does not change the fact that the applicable statutes and regulations required the submission of both a Part A and Part B application before this activity fee could be imposed. Furthermore, while DTSC asserts that the fee should be imposed upon the submission of a Part B application alone because the process of completing an application may take years, this argument conflates administrative completeness and technical completeness. While it may take years for a permit application to satisfy DTSC's technical completeness review, according to DTSC's Permit Writer Instructions, it should only take DTSC 30 days to determine whether the major components of the application are included in the application package, such that DTSC mails to the applicant a Notice of Deficiency (if the package is administratively incomplete) or an administrative completeness letter (which identifies the activity fee).

Based on the foregoing, OTA finds that former Health and Safety Code section 25205.7, DTSC's regulations, DTSC's public guidance, and DTSC's communications with appellant indicate that a full permit application is made upon the submission of both a Part A application and a Part B application. Because appellant did not submit a Part A application for the permit request, the $55,910 activity fee was not properly imposed; accordingly, the fee should be deleted.

Issue 2: Whether adjustments are warranted to the activity fee of $23,001.

Appellant operated as a hazardous waste transporter. It is undisputed that appellant applied for, received, and maintained a standardized Series C permit, which included submission of a Part A application. An application for a standardized permit is governed by Article 6.5 of Chapter 20 of DTSC's regulations. Appellant's standardized permit did not authorize appellant to perform any RCRA-covered activities. On September 8, 2010, appellant submitted a Class 2 and Class 3 standardized permit modification request to DTSC.

An initial application for a standardized permit incorporates some, but not all, of the requirements for an initial application for a full permit. (Cal. Code Regs., tit. 22, § 66270.69.2(a)(2).) DTSC's regulations under Article 4, Chapter 20, do not require the resubmission of a new permit application for a standardized permit modification. A request for a permit modification for non-RCRA activities is governed by Regulation section 66270.42.5. This section incorporates Regulation section 66270.42(c) for Class 3 permit modification requests. For a Class 3 permit modification, the regulation requires that the permittee submit a modification request to DTSC that includes the following information:

> (A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;
> (B) identifies that the modification is a Class 3 modification;
> (C) explains why the modification is needed; and
> (D) provides the applicable information required by sections 66270.10, 66270.13 through 66270.23, 66270.62, 66270.63 and 66270.66.

(Cal. Code Regs., tit. 18, § 66270.42(c)(1).)

Regulation section 66270.10 states that a person must submit "the permit application or a permit modification request," depending on the applicable facts (e.g., new permittee versus existing permittee). (Cal. Code Regs., tit. 22, § 66270.10(f)(1).) Notably, Part A of the permit application only lists basic background information and appellant already submitted a Part A application when it applied for and received its standardized Series C permit that it sought to modify. Thus, for example, the July 22, 2010 Inspection Report signed by DTSC notes "Part A/Part B: Available and reviewed" by DTSC. Furthermore, appellant submitted the September 8, 2010 permit modification request explaining the modification and need for the modification, and supplemented it with a Part B application. DTSC reviewed and responded to

appellant's permit modification request. As such, the permit modification request activity fee of $23,001 was properly imposed and no adjustments to the fee are warranted.

HOLDINGS

1. The activity fee of $55,910 was not properly imposed and should be deleted.
2. No adjustments are warranted to the activity fee of $23,001.

DISPOSITION

Appellant's appeal of the $55,910 fee is granted. Appellant's appeal of the $23,001 fee is denied.

DocuSigned by:
Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

We concur:

DocuSigned by:
Michael F. Geary
1A9B52EF88AC4C7...
Michael F. Geary
Administrative Law Judge

DocuSigned by:
3CADA62FB4864CB...
Andrew J. Kwee
Administrative Law Judge

Date Issued: 10/18/2023