

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

4 In the Matter of: )

) Docket PAT-FY14/15-001

5 )  
6 FILTER RECYCLING SERVICES, INC. )

) ORDER TO SET BRIEFING PERIOD  
) FOR PETITION FOR REVIEW

7 180 West Monte Avenue )

8 Rialto, California 92316 )

9 County of San Bernardino )

) California Code of Regulations,  
) title 22, section 66271.18

U.S. EPA ID. NO. CAD982444481 )  
10 )

11  
12 **I. INTRODUCTION**

13 On April 21, 2014, the Department of Toxic Substances Control (Department or  
14 DTSC) issued a Class 2 Permit Modification decision for the Series A Standardized  
15 Hazardous Waste Facility Permit (Permit) for Filter Recycling Services, Inc. (FRS),  
16 located at 180 West Monte Avenue, Rialto, California.

17 One petition for review (appeal) of the Department's decision was filed by  
18 Mr. Wade Riddering and by Ms. Deborah Perlman on behalf of FRS on May 27, 2014.  
19 Pursuant to California Code of Regulations, title 22, section 66271.14, subdivision  
20 (b)(2), the permit modification decision has been stayed pending the Department's  
21 determination whether the appeal meets the criteria for granting review. In the interim,  
22 FRS continues to be authorized to operate the facility under the terms and conditions of  
23 the unmodified permit, issued December 17, 2001, with an original effective date of  
24 January 21, 2002. The original permit decision was appealed and at the resolution of  
25 the appeal the permit was given an effective date of October 23, 2006.

26 **II. JURISDICTION**

27 The Department of Toxic Substances Control has jurisdiction over hazardous  
28 waste facility permits and the imposition of conditions on such permits pursuant to the

1 California Health and Safety Code sections 25200 et seq., 25186.1, subdivision (b)(1),  
2 and California Code of Regulations, title 22, sections 66270.30 and 66271.18.

3 **III. BACKGROUND**

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

5 The location, history, and description of the facility are presented in the Permit as  
6 follows:

7 The Permittee's facility (hereafter the Permittee's Facility or the Facility) is  
8 located at 180 West Monte Avenue, Rialto, in San Bernardino County, at  
9 latitude 34 degrees 3 minutes 34 seconds and longitude 117 degrees  
10 22 minutes 51 seconds. The Facility is located on land that is zoned by  
11 the City of Rialto for heavy industrial land use. The Facility is not located  
12 in a designated flood zone. The Facility is located on Parcel 4 of Parcel  
13 Map 12364, as per Map recorded in Book 146, Pages 38 and 39 of Parcel  
14 Maps, in the Office of the County Recorder of San Bernardino, State of  
15 California.

16 Filter Recycling Services, Inc. (FRS) has operated at this location since  
17 1990 and was granted Interim Status authorization in 1993 pursuant to  
18 Health and Safety Code section 25201.6. In 1993, FRS also applied to  
19 the DTSC for a Series A Standardized Hazardous Waste Facility Permit  
20 (Standardized Permit or Permit) authorizing the operation of a hazardous  
21 waste treatment and storage facility. DTSC issued the Standardized  
22 Permit to FRS on December 17, 2001. The Permit became effective  
23 January 22, 2002 and expired January 22, 2012. FRS has since  
24 submitted an application to renew its Permit. The 2002 Permit remains  
25 effective until DTSC makes a final decision on the FRS Permit renewal  
26 application.

27 FRS accepts multiple wastestreams (mostly contaminated containers of  
28 various types) and uses shredder/separator units to generate metallic  
material which are sent to an offsite smelter for metal reclamation. During  
the shredding and separation process, hazardous wastes are generated  
and are sent offsite to authorized treatment or disposal facilities. FRS also  
uses the shredder/separator to shred consumer products which the  
manufacturer requires to be destroyed. Hazardous wastes, including  
ignitable waste, are also generated when FRS runs aerosol cans through  
puncturing machines before putting the empty cans into the shredder/  
separators. Additionally, FRS accepts waste antifreeze and used oil that  
are bulked into larger containers to be sent to an offsite recovery facility.

1 The wastes accepted by the facility are limited to wastes that are not fully  
2 regulated as hazardous wastes under the Resource Conservation and  
3 Recovery Act (RCRA) in accordance with federal regulations contained in  
4 Part 261, Title 40, Code of Federal Regulations. These wastes would be  
5 considered RCRA hazardous wastes, but are exempted or excluded from  
6 federal facility permitting requirements. Additionally, FRS also accepts  
7 wastes that are regulated as hazardous wastes only in California. FRS  
8 also accepts non-hazardous wastes. The management of the non-  
9 hazardous wastes is not regulated under this Standardized Permit.

7 Accepted liquid wastes are either stored and shipped to an authorized  
8 hazardous waste facility, or combined with similar liquids and shipped to  
9 an authorized hazardous waste facility. Solid wastes are 1) stored and  
10 shipped to an authorized hazardous waste facility, 2) combined with  
11 similar solid wastes and shipped to an authorized hazardous waste facility,  
12 or 3) treated through shredding and separating equipment and the  
13 different separated wastes are shipped to either an authorized hazardous  
14 waste facility or a non-hazardous waste management facility.

12 A written assessment that was certified by an independent, qualified,  
13 professional engineer registered in California was completed for the  
14 containment systems. In this assessment, the engineer certified that the  
15 containment systems satisfy the requirements of sections 66264.175,  
16 66264.193, 66270.15, and 66270.16 of Title 22 of the California Code of  
17 Regulations. Additionally, safe management practices, operating  
18 procedures, inspection programs, and the facility's contingency plan all  
19 ensure environmentally safe operations at the Facility.

18 **B. PERMIT MODIFICATION DECISION**

19 In a letter dated February 24, 2008, FRS identified proposed permit  
20 modifications. FRS submitted a Class 2 permit modification request to DTSC on  
21 May 25, 2010, pursuant to California Code of Regulations, title 22, section 66270.42.  
22 FRS published a public notice on June 6, 2010, and held a public meeting on  
23 July 14, 2010. The public comment period closed on August 16, 2010. No substantive  
24 comments were received by DTSC. Pursuant to California Code of Regulations,  
25 title 22, section 66270.42, subdivision (b)(6)(A)3.b., DTSC announced a draft permit  
26 modification decision in a public notice issued on February 15, 2013. The public notice  
27 declared the start of a 45-day public comment period and solicited comments on the  
28 Draft Modified Permit decision. On March 19, 2013 at 5:30 P.M., DTSC held a public

1 meeting and hearing at the Rialto Public Library to receive comments. The public  
2 comment period ended on April 2, 2013. Mr. Wade Riddering and Ms. Deborah  
3 Perlman provided testimony at the public hearing and written comments during the  
4 public comment period. On April 21, 2014, the Department issued a Notice of Final  
5 Hazardous Waste Facility Permit Modification Decision and established a period, ending  
6 on May 27, 2014, for filing a request for review of the decision under California Code of  
7 Regulations, title 22, section 66271.18.

8 **C. PERMIT APPEAL PROCESS**

9 Pursuant to California Code of Regulations, title 22, section 66271.18,  
10 subdivision (a), the period for filing a petition for review (appeal) of the FRS permit  
11 modification decision ended on May 27, 2014. The petition for review was submitted by  
12 Mr. Riddering and Ms. Perlman (Petitioners) on May 27, 2014. On June 6, 2014, the  
13 Permit Appeals Officer of the Department issued a letter to Mr. Jon L. Bennett, Jr. of  
14 Filter Recycling Services, Inc., stating that pursuant to California Code of Regulations,  
15 title 22, section 66271.14, subdivision (b)(2) the permit decision has been stayed until  
16 the Department has completed review of the petition and determined which, if any, of  
17 the issues raised in the petition meet the criteria set forth in California Code of  
18 Regulations, title 22, section 66271.18 for granting review.

19 **IV. STANDARD OF REVIEW**

20 California Code of Regulations, title 22, section 66271.18, subdivision (a),  
21 provides that any person who filed comments, or participated in the public hearing, on a  
22 draft permit decision, during the public comment period for the draft permit decision,  
23 may petition the Department to review any condition of the final permit decision to the  
24 extent that the issues raised in the petition for review were also raised during the public  
25 comment period for the draft permit decision, including the public hearing. In addition,  
26 any person who did not file comments or participate in the public hearing on the draft  
27 permit may petition the Department for review of the final permit decision, but only with  
28 respect to those changes in the final permit decision from the draft permit decision.

1 California Code of Regulations, title 22, section 66271.18, subdivision (a), also  
2 provides, in pertinent part, that:

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

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

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

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

17 Because Petitioners Mr. Wade Riddering and Ms. Deborah Perlman submitted  
18 comments on the draft permit decision during the public comment period, they have  
19 standing to petition for review of any issues raised during the public comment period for  
20 the draft permit decision, as well as any issues that pertain to changes from the draft to  
21 the final permit decision.

## 22 **V. FINDINGS**

23 The Department has reviewed the appeals and hereby responds to the  
24 arguments and comments presented in the appeals. The Petitioner's Appeal  
25 Comments and the Department's responses are set forth below. The Department has  
26 determined that the following appeal comments filed by Petitioners meet the criteria for  
27 granting review pursuant to the California Code of Regulations, title 22, section  
28 66271.18, subdivision (a):

1 **COMMENT 1:** Petition for Review Section III.1., pages 4 and 5

2 Special Condition #14 on Page 10 of 71 of the Final Modified Permit.  
3 Raised by Riddering Comments to Draft Permit Comment 1-18.  
4 Raised by FRS Comments to Draft Permit; Comment 5-3.

5 This condition was commented upon, but the some language within this  
6 condition is newly inserted by DTSC, after the receipt of Public Comments  
7 and close of Public Comment Period, and therefore without prior  
8 opportunity for objection to be stated.

9 The Draft Permit released for Public Comment stated:

10 "All ignitable and reactive wastes shall be stored in the designated  
11 Ignitable Waste Storage Areas (IWSA) within Unit #8, #9, and #11 as  
12 identified in the Facility Plot Plan (Attachment 1, Figure 1). The IWSA shall  
13 be delineated with a 6" red painted border."

14 The newly revised special condition in the Final Modified Permit states:

15 "Except when moving to or from the IWSA, all containers (including  
16 transport vehicles) holding ignitable or reactive wastes shall be located  
17 entirely within the designated IWSA, as identified in the Facility Plot Plan  
18 (Attachment 1, Figure 2), pursuant to California Code of Regulations,  
19 section 66264.176. The IWSA shall be delineated with a 6" red painted  
20 border."

21 The change in special condition suggests a new condition that trucks  
22 holding ignitable or reactive waste be in the IWSA even when simply  
23 unloading a container for transport to the IWSA, and is based upon an  
24 erroneous conclusion of law. The application of CCR Title 22 §66264.176  
25 refers to the management of containers at a permitted facility, stating,  
26 "Containers holding ignitable or reactive waste shall be located at least 15  
27 meters (50 feet) from the facility's property line." This Regulation should  
28 be read consistently with H&S Code §25200.19(c)(1), that allows for the  
unloading and loading activities for the incidental period of time that is  
necessary to safety and effectively move waste from the transport vehicle  
to the authorized unit or from the authorized unit to the transport vehicle.  
The Code states in pertinent part: "The hazardous waste shall be moved  
directly between the authorized unit and the transport vehicle and shall not  
be held for any time off the transport vehicle outside of the authorized unit,  
*except for that incidental period of time that is necessary to safely and  
effectively move the waste from the transport vehicle to the authorized unit  
or from the authorized unit to the transport vehicle.*" (Emphasis added).

1 DTSC has erroneously failed to read the Regulation and Code section  
2 together, and in a manner in which they are consistent. In doing so, it  
3 becomes clear that ignitable or reactive waste should be located within the  
4 IWSA, except for the incidental period of time necessary to safely and  
5 effectively move the waste from the transport vehicle to the authorized unit  
6 or from the authorized unit to the transport vehicle.

7 The requirement is unduly burdensome on the facility. Even with the best  
8 planning, given the vagaries of traffic congestion in the region, it may  
9 occur that there is not sufficient room for an additional truck in the IWSA,  
10 when one arrives with a shipment of ignitable or reactive waste. As a  
11 practical matter, the facility needs to be able to unload the truck and place  
12 the containers of ignitable or reactive waste within the IWSA, rather than  
13 keep a truck waiting until such time as there is sufficient space for it within  
14 the IWSA.

15 DTSC's Response demonstrates that the condition is based upon a finding  
16 of fact or conclusion of law that is clearly erroneous. In responding to  
17 Riddering's Public Comment, Comment 1-18, DTSC concurs that it is only  
18 the "storage" of ignitable or reactive waste, and not the incidental period of  
19 time necessary to safely and effectively move the waste from the transport  
20 vehicle (including the unloading and loading) that must be within the  
21 IWSA, that is its concern. DTSC states: "DTSC developed this condition to  
22 ensure all ignitable wastes are *stored* in the IWSA in compliance with  
23 regulatory requirements." (Emphasis Added). FRS agrees with DTSC  
24 stated purpose of ensuring that all ignitable wastes are *stored* within the  
25 IWSA, and believes that this purpose is effectuated by maintaining the  
26 condition, but deleting the parenthetical language: "(including transport  
27 vehicles)".

28  
**Response:** Pursuant to the criteria set forth in California Code of Regulations,  
title 22, section 66271.18, subdivisions (a) and (c), the Department is granting review of  
the issues raised in this comment.

**COMMENT 2:** Petition for Review Section III.2, pages 5 and 6

Special Condition #1 on page 14 of 71 of the Final Modified permit.

Raised by Riddering Comments to Draft Permit Comment 1-23;  
Raised by FRS Comment 5-12; Comment 6-5; Comment 7-10

1 The Special Condition states:

2 "The Permittee shall ensure that all containers to be processed are to be  
3 emptied to the extent practicable before processing."

4 FRS Commented at 5-12 that:

5 "This condition is deleted because it is a waste of time. The machine  
6 separates the waste, so there is no need for hand emptying. There is no  
7 legitimate reason for this restriction. This was not required in the 2010  
8 Draft Permit."

9 By 2010 draft permit, FRS is referencing a 2010 version of the permit as  
10 modified, which was transmitted to FRS by DTSC as the permit which it  
11 intended to take to Public Comment as of that date, and before the  
12 Permitting Department transmitted it to Enforcement, who then revised  
13 and inserted their own, onerous restrictions.

14 Riddering Commented at 1-23 that:

15 "Why are these limitations being placed on FRS? These special conditions  
16 did not exist in the original permit, and they were not a part of the permit  
17 modification."

18 This condition is based upon a finding of fact that is clearly erroneous.  
19 DTSC Response at 1-23 indicates that that "DTSC does not consider this  
20 condition to be a limit as it requires the containers to be emptied to the  
21 extent 'practicable' which is consistent with FRS's operating practices." In  
22 fact, DTSC is incorrect that emptying is consistent with FRS operating  
23 practices. In FRS' submittal of Redlined Draft Permit, FRS corrected the  
24 misconception of its practices that it routinely emptied containers before  
25 shredding them by redlining and deleting the proposed language "The  
26 containers are emptied or only have a residual amount of material in  
27 them." (See, FRS Redlined Draft Permit at page 13 of 69). DTSC  
28 acknowledged that this language was inconsistent with FRS practice by  
agreeing to, and deleting, that language in the Final Modified Permit,  
which now omits that language. (See, Final Permit Modification at 13 of  
71.

This condition is based upon an additional finding of fact that is clearly  
erroneous. DTSC states that the intended purpose of the condition was to  
"prevent splashing of hazardous waste liquids during the shredder  
operation." (See, Response to Comment 5-12). However, as a practical  
matter, the requirement of pre-emptying the containers increases the  
likelihood of splashing during the pre-emptying process. The machine is

1 designed to, and historically has routinely been used, to shred containers  
2 containing liquids. In the course of so doing, it avoids the need for human  
3 contact as part of the process. While there is no splashing as a result of  
4 the machine shredding process, assuming for the sake of discussion that  
5 there were any, such splashing would not be on a human in the emptying  
6 process. Conversely, hand emptying of containers containing liquids  
7 increases the likelihood of splashing.

8 FRS proposes that the condition be deleted entirely, or alternatively be  
9 restated as follows: "The Permittee shall ensure that all containers *over 5*  
10 *gallons* to be processed are emptied to the extent practicable before  
11 processing."

12 **Response:** Pursuant to the criteria set forth in California Code of Regulations,  
13 title 22, section 66271.18, subdivisions (a) and (c), the Department is granting review of  
14 the issues raised in this comment.

15 **COMMENT 3:** Petition for Review Section III.3., pages 6 and 7

16 Special Condition #18 on Page 11 of 71 of the Final Modified permit  
17 Raised by Riddering Comments to Draft Permit Comment 1-16;  
18 Raised by FRS Comments to Draft Permit 5-6

19 This Special Condition states that "The Permittee shall not treat, as  
20 defined in H&SC section 25123.5 and CCR section 66260.10, used oil and  
21 oily wastewaters. Prohibited treatment for these wastes include, but are  
22 not limited to, gravity separation of Used Oil (WS-A), Waste Oil (WE-B)  
23 and Oily Water (WE-C) or blending/mixing of different weights of these  
24 waste streams for recycling purposes."

25 This special condition is based upon a finding of fact or conclusion of law  
26 that is clearly erroneous. The condition as worded is contradictory and  
27 inconsistent with H&S Code §25123.5 and CCR Title 22 §66260.10 as  
28 phase separation, sieving, and/or filtering, as long as heat or chemicals  
are not used in the process, are specifically defined as *not* being  
treatment. Gravity separation is a type of phase separation. See, 22 CCR  
66450.11(a)(2)(C). Therefore, gravity separation is excluded from  
definition of "treatment" under the Regulations.

Further, this Special Condition is inconsistent with the activity description  
of Unit #9 on Page 30 of 71 that states "The liquid wastes will pass  
through a filter and after gravity separation .....".

1 By CEQA Initial Study in regard to FRS' Permit Renewal Application, the  
2 study determined that there is "No Impact" of any nature, from "Addition of  
3 gravity separation of oily waters in the permitted roll-off containers Unit#6,  
4 to remove solids and remove water layer from waste oil with no  
5 treatment."<sup>1</sup>

6 FRS clearly cannot stop gravity, nor gravity separation from occurring.  
7 FRS is being disparately treated because it is the only TSDF in California  
8 that is prohibited from conducting gravity separation. Therefore, it is an  
9 important policy consideration that this condition be deleted.

10 This special condition should be deleted, or alternatively, the second  
11 sentence, which defines treatment inconsistently with the Regulation  
12 which should be deleted.

13 **Response:** Pursuant to the criteria set forth in California Code of Regulations,  
14 title 22, section 66271.18, subdivisions (a) and (c), the Department is granting review of  
15 the issues raised in this comment.

16 **COMMENT 4:** Petition for Review Sections III.4. and III.5, pages 7 to 11

17 Special Condition #15 on page 10 of 71 of the Final Modified permit.

18 Raised by Riddering Comments to Draft Permit 1-14;  
19 Raised by FRS Comments to Draft Permit 5-4.

20 This Special Condition states:

21 "The Permittee is authorized to receive, transfer, store or treat only the  
22 hazardous wastestreams specified in Table 1 of this Permit. A  
23 wastestream must meet the conditions specified in Table 1 that are  
24 applicable to that wastestream to be authorized. The wastestream must  
25 meet the applicable common name, waste codes (US EPA and/or  
26 California Waste Code) and be consistent with the description of waste,  
27 (referred to as "Description of Waste" in Table I) to be authorized."

28 DTSC has responded by stating in pertinent part that "Table 1 does not  
eliminate authorized waste streams."

Incorporated herein are the remarks in Par. 5, below, which reflect the  
Table 1 waste streams.

Table 1 on Pages 46-51 of 71 of the Final Modified permit.

<sup>1</sup> [Exhibit 5 CEQA Initial Study, At Bate Stamp 008669]

Comments to Draft permit; Comment 1-14

In discussions with permitting and enforcement it is still apparent that though permitting does not intend for Table 1 to be a limiting list or waste streams, but a list of examples; enforcement does still view this list as narrow and limiting.

To clarify Table 1 to reflect more examples of the categories of common names the following changes to Table 1 are proposed. **BOLD** lined out are deleted words, and red italics are additions.

Table 1. Waste Streams Description

Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
A[1]	Used Oil	None	221, 261, 612	On specification recyclable oil PCB <2 ppm
B[2]	Waste Oil	Exempt	221, 222, 223, 261, 612	Off specification waste oil >1000 ppm halogens PCB <50 ppm
C[3]	Oily Water	None	221, 222, 223, 231, 232, 241, 123, 133, 134, 135, 342, 343, 451, 531, 541, 551, 612	<del>Oil</del> and water mixtures with varied amounts of settling solids <i>and may or may not be contaminated with varying fractions of hydrocarbons.</i>
D[4]	Oily Debris	None	221, 222, 223, 232, 241, 343, 352, 551, 571, 581, 591, 612, 613	<del>Oil-contaminated</del> debris including personal protective equipment, rags, metal and rubber hoses, plastic, wood, pads, socks, booms, socks, clothing, paper and cardboard. <i>May or may not be contaminated with varying fractions of hydrocarbons.</i>

Table 1. Waste Streams Description

Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
E[5]	Oil Aerosol Cans	Exempt D001 / Exempt D003	612	<b>Contaminated</b> aerosol cans containing oil related products and residues, Universal Waste
F[6]	Spent Oil Aerosol Cans	Exempt	181, 223, 311, 513	Spent aerosol cans previously containing oil related products, Universal Waste
G[7]	Used Oil Filters	None	221, 223, 352, 612	Oil filters from internal combustion engines and equipment <i>oil filtering. Gasoline and diesel fuel filters may be included in this waste stream per [illegible].</i>
H[8]	Oil Contaminated Containers	None	352, 223, 513, 612	<b>Oily</b> contaminated containers constructed of steel, plastic and cardboard consisting of sizes from quart to 110 gallon capacity. <i>May or may not be contaminated with varying fractions of hydrocarbons.</i>
I[9]	Hydrocarbon Contaminated Soil (non RCRA)	None	223, 261, 321, 322, 352, 521, 611, 612	Soils contaminated with <b>diesel and oil</b> <i>varying fractions of hydrocarbons and/or CA metals.</i>
J[10]	Oil Contaminated Absorbents	None	221, 223, 352, 612	Cleanup of <b>diesel and/or oil</b> spills with granulated organic and inorganic absorbent materials <i>may or may not be contaminated with varying fractions</i>

Table 1. Waste Streams Description

Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
K[11]	Solid Grease	None	223, 352, 331, 612	Spent, surplus and aged lubricating grease
L[12]	Liquid Grease	None	221, 223, 331, 612	Spent, surplus and aged lubricating grease
M[13]	Solidified Petroleum Tank Residuals (non-RCRA)	None	221, 222, 223, 241, 252, 343, 352, 571	Absorbents added to tank bottom petroleum residuals to solidify crude, diesel, hydrocarbons and oil/water sediments
2A[14]	Paint Debris	None	352, 291, 612	Brushes, personal protective equipment, paint, hoses, rags, drop cloths, rollers, wipes, trays, masking tape, visqueen, wood, cardboard, and other paint related debris with dry solid paint or paint stained
2B[15]	Paint Filters	None	352, 291, 461, 612	Spent foam, cloth, cardboard, paper, plastic cartridge filters, fiber membrane filters
2C[16]	Paint Contaminated Containers	None	352, 512, 513, 612	Empty paint containers (steel, cardboard, plastic, fiber) with solidified paint waste residue
2D[17]	Paints (latex based)	None	291, 461, 612	Used and/or unused latex paint (solid, liquid or sludge) waste in steel, cardboard, plastic or fiber containers
2E[18]	Paints (oil based)	None	461, 612, 211, 213, 214	Used and/or unused oil based paint (solid, liquid or sludge) waste in steel, cardboard, plastic or fiber containers

Table 1. Waste Streams Description

Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
2F[19]	Paint Aerosol Cans	Exempt D001 / Exempt D003	612	<del>Contaminated</del> <del>unused</del> aerosol cans containing paint related products and residuals, Universal Waste
2G[20]	Spent Paint Aerosol Cans	None	513	Spent aerosol cans containing paint related products and residuals, Universal Waste
3A[21]	Resin	None	271, 272, 352, 612	<del>Used and spent solidified reacted</del> resin waste material
3B[22]	Glues	None	281, 352, 612	Used or unused water based liquid sludge or solid glues in glass, steel, plastic containers
3C[23]	Soaps (liquid)	None	141, 331, 343, 561, 612	Spent or surplus liquid or sludge detergent and soaps
3D[24]	Soaps (solid)	None	141, 181, 331, 352, 561, 612	Spent or surplus solid detergent and soaps
3E[25]	Oil Contaminated Asphalt Debris (non RCRA)	None	352, 612	Removed or unused solid roofing asphalt or asphalt composite waste material or excavated solid asphalt road base debris
3F[26]	Sand and Bead Blasting Residue (non- RCRA)	None	181, 352	Surface cleaning residues from painted, oily, rust coated surfaces, non RCRA used sand or bead blasting waste residue from metal parts

Table 1. Waste Streams Description

Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
3G[27]	Machining Grinding Residue (non- RCRA)	None	171, 172, 181, 223, 352	Non- RCRA metal shavings, <i>turnings, parts</i> or waste residue from metal machine grinding operations, includes steel and/or other non RCRA metal parts (metal and grit)
3H[28]	Metal Polishing Debris (non-RCRA)	None	352	Non- RCRA used polishing rags, polishing and buffing wheels debris and polish material residue waste from surface cleaning of painted rust coated anodized surfaces
3I[29]	Metal Polishing Compounds	None	352	Wax, dust, granular waste
3J[30]	Clarifier Sludge (non- RCRA)	None	135, 181, 222, 223, 241, 252, 321, 352, 411, 421, 431, 441, 471, 491, 521	Non-RCRA clarifier tank bottom sludge and solids from industrial, commercial, automotive and waste water treatment solutions
3K[31]	Clarifier Filter Cake (non-RCRA)	None	222, 223, 241, 252, 352, 181, 411, 421, 431, 441, 471	Non- RCRA clarifier tank bottom solid filter cake from industrial, commercial, automotive and waste water treatment systems
3L[32]	Anti-freeze	None	133, 134, 135, 343, 612	Spent propylene and ethylene glycol waste solutions
3M[33]	Inks (liquid)	None	343, 331	Non- RCRA used or unused water based liquid waste inks in plastic, glass or metal containers

Table 1. Waste Streams Description

Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
3N[34]	Inks (solid)	None	352	Non- RCRA used or unused water based solid waste inks in plastic, glass or metal containers
3O[35]	Asbestos	None	151, 612	Triple bagged asbestos and asbestos containing waste
3P[36]	Other Spent Catalyst	None	162, 612	End-of-life and off-specification catalyst
3Q[37A]	Water/Gasoline (ignitable) (non-RCRA)	Exempt D001	133, 134, 135, 612	Non-RCRA ignitable water contaminated with gasoline, must be received from CESQG and HHW generators.
3Q[37B]	Water/Gasoline (non-ignitable) (non-RCRA)	None	133, 134, 135, 612	Non-RCRA non-ignitable water contaminated with gasoline
3R[38]	Pharmaceutical Waste	None	311, 612	Off-specification, outdated, defective
3S[39]	Treated Wood Waste	None	614, 612	Off-specification, used
4A[40]	Off Specification Waste Oil	None	221	Waste oil mixtures with >1000 ppm halogens
4B-2[41]	Specification Waste Oil	None	221	Waste oil mixtures with <1000 ppm halogens
4C1[42]	Waste Water	None	223, 133, 134, 135	Non- RCRA waste water <b>contaminated with oil</b>

Table 1. Waste Streams Description

Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
4C[43]	Oily Water	None	223, 133, 134, 135	Non- RCRA waste water contaminated with oil
4D[44]	Scrap Metal	None	Recycled	Shredded steel
4E[45]	Paint Sludge	Exempt D001	461	Paint sludge from emptying containers generated by FRS, received from HHW and CESQGs.
4F[46]	Oil Contaminated Debris	None	352	Contaminated solids
4G[47]	Paint contaminated debris	None	352	Paint contaminated solids
4H[48]	Carbon Filters	D001	352	Filters from depressurizing aerosol cans generated by FRS
4I[49]	Aerosol Oil Residue	D001	223	Liquid residues from puncturing oil aerosol cans generated by FRS.
4J[50]	Aerosol Paint Residue	D001	343	Liquid residues from puncturing paint aerosol cans generated by FRS.
4K[51]	Lab Pack	Any	343, 212, 213, 612, 211	Small containers of non-treatable waste from households or CESQG's

Table 1. Waste Streams Description

Waste Stream Number	Common Name	U.S. EPA Code	California Waste Code(s)	Description of Waste
52	Water/Gasoline	Exempt D001	133, 134, 135, 612	Waste stream 52 will be shipped offsite and is generated from consolidating only waste stream 37A (Non-RCRA ignitable water/gasoline).
53	Recovered Gasoline	Exempt D001	133, 134, 135, 612	Waste Stream 53 is generated by consolidating the residual liquids resulting from the processing of excluded recyclable fuel filters and pump nozzles. This waste will be shipped offsite.

**Response:** Pursuant to the criteria set forth in California Code of Regulations, title 22, section 66271.18, subdivisions (a) and (c), the Department is granting review of the issues raised in this comment.

**COMMENT 5:** Petition for Review Section III.6., pages 11 to 15

Special Condition #2 on page 9 of 71 of the Final Modified Permit  
 Special Condition # 12 on page 31 of 71 of the Final Modified Permit  
 Raised by Riddering Comments to Draft Permit 1-13; Comment 1-29;  
 Raised by FRS Comments to Draft Permit 5-2 and Comment 5-30;  
 Comment 7-6.

Special Condition #2 states:

"Hazardous waste shall not be land disposed at the Facility, whether temporarily or permanently."

Special Condition #12 on page 31 of 71 states:

"Any solid hazardous waste in this Unit must be in containers. All solid hazardous waste transfer shall occur directly from one container into another container. Dump trucks are containers. No solid waste transfer

1 shall occur if visible emissions or clouds of dust are created that are likely  
2 to leave this Unit during the transfer of the waste."

3 Transfer from one container to another container, that is, e.g. from drum to  
4 drum or roll off bin to roll off bin, does not allow for inspection in between.  
5 The very benefit to California is in the inspection allowing extraction of  
6 recyclable material from the other material. This condition places a barrier  
7 on the benefit, and makes it difficult to impossible to determine contents  
8 that may be buried within, as well as contradicting FRS' WAP, which  
9 requires it to inspect incoming waste.

10 DTSC interpretations to prevent open inspection and sorting are based  
11 upon a clearly erroneous finding of fact and/or conclusion of law. DTSC  
12 Response to Comments state: "uncontainerized solid waste unloaded or  
13 placed on the ground or on a concrete or asphalt slab would be a waste  
14 pile, and thus land disposal. Special Condition 12 on page 30 of 69 of the  
15 Draft Modified Permit was included to clarify that solid hazardous waste  
16 may not be unloaded or placed directly on the ground (or concrete/asphalt  
17 slab) for any period of time in Unit #9. Special Condition 12 requires that  
18 all solid hazardous waste transfer occur directly from one container into  
19 another container to make certain that no land disposal takes place." See,  
20 Response to Public Comments 1-29.

21 DTSC misinterprets the definition of "waste pile" to conclude that  
22 unloading uncontainerized solid waste onto a "concrete or asphalt slab"  
23 within a fully regulated unit would automatically be a "waste pile". The  
24 Regulations define "waste pile" as: "any noncontainerized accumulation of  
25 solid, nonflowing hazardous waste that is used for treatment or storage  
26 and that is not [in] a containment building." 22 CCR section 66260.10.  
27 Containment buildings are subject to rigorous design standards. 22 CCR  
28 section 66264.1101.

FRS' 180 W. Monte building qualifies as a containment building pursuant  
to CCR 66260.10 and its engineered, bermed, covered, security fenced,  
sprinklered, paved containment units qualify as containment buildings as  
well. FRS' concern is with its ability to unload bulk solids within a paved,  
bermed, fully contained and regulated unit for the purpose of sorting, with  
the objective of recycling. There is no factual basis to prohibit FRS from  
doing so, nor any legal premise requiring prohibition of this activity. DTSC  
mis-interprets the law, imposing Condition # 12 with apparent purpose of  
restricting FRS ability to do so.

Over ten years ago, DTSC Enforcement addressed the issue of waste  
piles, and instructed FRS that solid waste could be offloaded onto its  
permitted units for the incidental time necessary to inspect, sort, separate

1 and reload, and that this was not, in fact, a "waste pile". This interpretation  
2 is consistent with CCR 66260.10 and with Health & Safety Code section  
3 25200.19. H&S section 25200.19(a) provides that "A hazardous waste  
4 facility ... may conduct bulk, packaged, or containerized hazardous waste  
5 unloading operations in accordance with the requirements of this section"  
6 subject to exception not applicable herein. H&S section 25200.19(d)  
7 defines "unloading" as "activities associated with the receipt of bulk,  
8 packaged, or containerized hazardous waste ... " H&S 25200.19 requires  
9 that such "unloading of bulk hazardous waste shall be conducted ... with a  
10 containment system capable of collecting and containing leaks and spills  
11 that may reasonably be anticipated to occur during loading and unloading  
12 operations until the leaked or spilled material is removed ... "

13 This is exactly the containment system developed and used by FRS, in its  
14 fully engineered, bermed, covered, security fenced, sprinklered, paved  
15 containment units.

16 Even assuming for the purpose of discussion that it were a waste pile,  
17 there is no factual nor legal basis to prohibit FRS from inspecting and  
18 sorting incoming material, to determine if it complies with the manifest, is  
19 material that FRS is authorized to accept, and to sort recyclables, all of  
20 which would be desirable objectives. While FRS vehemently disputes that  
21 the incidental time necessary to unload, during which the material is  
22 inspected, constitutes "storage" the Regulations provide that TSDFs that  
23 do store or treat hazardous waste in piles - and that is inside or under a  
24 structure providing protection from precipitation - is not subject to further  
25 regulation regarding lining requirements. 22 CCR 66264.250(c). FRS' fully  
26 enclosed unit meets or exceeds these requirements.

27 DTSC argument is legally incorrect because it is internally inconsistent,  
28 and inconsistent with regulation. DTSC states that "any facility that  
engages in any land disposal activity is ineligible for a standardized  
permit." (Response to Comment 1-29, citing H&S section 25201.6(g)). If  
maintaining a waste pile is automatically "land disposal" as DTSC also  
maintains, then no TSDF could ever have a pile, or be permitted to have a  
pile, under any circumstance, pursuant to H&S 25201.6(g). Yet, 22 CCR  
66264.250, provides the requirements for a TSDF to store or treat piles.  
Thus, it is apparent that neither the legislature, nor California EPA in  
promulgating the Regulations, intended a waste pile, or pile, to be  
automatically deemed a "land disposal" activity.

To be "land disposed," the material would in this circumstance need to be  
placed in or on the bare ground ("land") which is not the case.

1 This correct conclusion of FRS is supported by CCR Title 22 §22260.10,  
2 which defines "Land Disposal" as follows:

3 "'Land disposal' means placement in or on the land, except in a corrective  
4 action management unit, and includes, but is not limited to, placement in a  
5 landfill, surface impoundment, waste pile, injection well, land treatment  
6 facility, salt dome formation, salt bed formation, underground mine or  
7 cave, or placement in a concrete vault or bunker intended for disposal  
8 purposes."

9 Although not defined by Regulation, common meaning of the term "land"  
10 as in "placement in or on the land" by Merriam Webster is the "solid part of  
11 the surface of the Earth: an area of ground". FRS is not, and never has,  
12 proposed to unload onto the bare ground.

13 The definition of "Land disposal method" sheds further clarity on the  
14 meaning of "Land Disposal". Land Disposal Method is defined as; a)  
15 disposing of hazardous waste, b) treatment of hazardous waste, c)  
16 storage of hazardous waste for longer than one year. Disposal and  
17 treatment are also defined in §66260.10. FRS does not dispose of  
18 hazardous waste, nor treat hazardous waste, nor does it store hazardous  
19 waste for longer than one year.

20 FRS requests that Special Condition #12 be clarified to add the italicized  
21 language, stating:

22 "All solid hazardous waste transfer shall occur directly from one container  
23 into another container, *or into a containment unit.*"

24 FRS's concern is that it continue to employ the procedures in accordance  
25 with its WAP in sorting and inspecting the bulk solids for incompatible  
26 materials, and those materials that are inconsistent with the generator  
27 profile or the FRS permit, and that it do so by sorting and inspecting bulk  
28 solids within a fully engineered, bermed, covered, security fenced,  
sprinklered, paved, regulated unit.

The sorting process also allows for the removal of recyclables from the  
waste stream. This allows FRS to comply with, and allows FRS to assist  
its customers and government agencies to comply with AB939.

DTSC permit writer [project manger] Waqar Ahmad<sup>2</sup> concurred in  
deposition testimony that there is no concern for human health or the

<sup>2</sup> In Response to Comments, Comment 1-8, DTSC acknowledges that Mr. Ahmad was assigned  
as the permit writer [project manager] and would be reviewing the Class 2 permit modification request.

1 environment by allowing FRS to unload bulk solid hazardous waste  
2 directly into a paved, bermed, enclosed, regulated unit:

3 Q: ... What concern, if any, is presented by unloading out of a  
4 container solid hazardous waste onto a fully paved bermed  
5 enclosed regulated unit?"

6 A: The way you are packing the statement, it is already taken  
7 care of that no dust would be generated, nothing would be  
8 coming out and there's no chance of any vapors, as you  
9 already taking into consideration all the impact coming into  
10 the atmosphere. *Under this situation, I would not have any  
11 concern.*<sup>3</sup>

12 Of course, Mr. Ahmad's concern regarding impact into the atmosphere is  
13 addressed by the rest of the Special Condition itself, which requires that,  
14 "No solid waste transfer shall occur if visible emissions or clouds of dust  
15 are created that are likely to leave this Unit during the transfer of the  
16 waste."

17 Moreover, Mr. Ahmad confirmed that it is not a violation of FRS' existing  
18 permit, nor California law, for it to unload solid hazardous waste not in  
19 containers and to offload them in the receiving area for inspection, stating:

20 Q: ... "if FRS receives solid hazardous waste that are not in  
21 containers and offloads them in the receiving shipping area  
22 for inspection, would that activity description cause them to  
23 be in violation?"

24 A: I would say that it has to be unloaded in a regulated unit.<sup>4</sup>

25 Mr. Ahmad further confirmed that the Permit as drafted does not prohibit  
26 unloading bulk solids directly into Unit 9.<sup>5</sup>

27 **Response:** Pursuant to the criteria set forth in California Code of Regulations,  
28 title 22, section 66271.18, subdivisions (a) and (c), the Department is granting review of  
the issues raised in this comment.

<sup>3</sup> Deposition of Waqar Ahmad v. II p. 272 lns 17-273 lns 5, lodged herewith.

<sup>4</sup> Deposition of Waqar Ahmad v. II p. 316 lns 15-22, lodged herewith.

<sup>5</sup> Deposition of Waqar Ahmad v. II pg 316 ln 9- pg. 319 ln. 6, lodged herewith.

1 **VI. ORDER**

2 For the reasons set forth above, the Department has determined that Appeal  
3 Comments 1, 2, 3, 4, and 5 meet the criteria for granting a review pursuant to California  
4 Code of Regulations, title 22, section 66271.18, subdivision (a) and the Department is  
5 granting review of these Comments. Pursuant to California Code of Regulations,  
6 title 22, section 66271.18, subdivision (c), the Department will establish a briefing  
7 schedule for this appeal, during which time interested parties may file written arguments  
8 pertaining to the issues of the appeal comments for which review has been granted.  
9 All arguments must be accompanied by supporting rationale.

10 Arguments filed after the close of the briefing schedule or comments relating to  
11 issues other than those for which review has been granted will not be accepted. The  
12 briefing schedule and this Order will be announced in a public notice pursuant to  
13 California Code of Regulations, title 22, section 66271.18, subdivision (c). The briefing  
14 period will be put forth in the public notice and the actual closing date will be specified in  
15 the public notice. All arguments pertaining to the comments that have been granted  
16 review must be filed in writing, postmarked by the date specified in the public notice,  
17 and emailed to [appeals@dtsc.ca.gov](mailto:appeals@dtsc.ca.gov) or mailed to:

18 FRS Permit Modification Appeal  
19 Department of Toxic Substances Control  
20 8800 Cal Center Drive  
Sacramento, California 94826-3200

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1 Pursuant to California Code of Regulations, title 22, section 66271.15, the  
2 contested modified permit conditions are not severable from the uncontested modified  
3 permit conditions. Therefore, all provisions of the permit modification decision issued  
4 for this Facility on April 21, 2014, are to be stayed pending the decision after briefing of  
5 the appeal comments for which review was granted.  
6

7  
8 Date: 8/25/14

// original signed by //

  
9 Pauline Batarseh  
10 Permit Appeals Officer  
11 Hazardous Waste Management Program  
12 Department of Toxic Substances Control  
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