

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

5 In the matter of:) Docket Number: PAT-FY08/09-05
6)
7 SAN JOAQUIN FILTER) FINAL APPEAL DECISION ON
8 RECYCLING, LLC) PETITION FOR REVIEW
9 14287 E. Manning Avenue)
10 Parlier, California 93648)
11) California Code of Regulations,
12 EPA ID. NO. CAL 000 102 751) Title 22, Section 66271.18
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14 **I. INTRODUCTION**

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

21 On May 5, 2009, the Permit Appeals Officer of the Department of Toxic
22 Substances Control (Department) issued an "Order Partially Grant Reviewing Review,
23 Denial of Review, and Vacating Stay" (Docket No.: PAT-FY08/09-05), granting review of
24 Petitioner's Appeal Comments 3 and 4 and denying Appeal Comments 1, 2, 5, 6, 7, 8
25 and 9. Pursuant to California Code of Regulations, title 22, section 66271.18(c), the
26 Department established a phased briefing schedule that started on May 15, 2009 and
27 ended on July 2, 2009. One brief from DTSC was received during the briefing period.
28

1 **II. JURISDICTION**

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

6
7 **III. BACKGROUND**

8 **A. LOCATION AND DESCRIPTION OF FACILITY**

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

10
11 The San Joaquin Filter Recycling's facility (Facility) is located at 14287 E
12 Manning Avenue in Parlier, Fresno County, California, (Figure 1) at a
13 Latitude of North 36° 36' 15.9" and a Longitude of West 119° 31' 57.3"
14 (Figure 2). The Facility consists of a 1.12-acre site located 7.1 miles east
of Highway CA-99 on E. Manning Avenue between S. Newmark and
S. Mendocino Avenues.

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

24 **B. PERMIT DECISION**

25 The Facility submitted a permit renewal application dated January 3, 2007.
26 DTSC prepared a Draft Permit and a Draft Notice of Exemption in compliance with the
27 California Environmental Quality Act (CEQA, Public Resources Code section 21000 et
28 seq.) for the project. On July 15, 2008, DTSC issued a public notice announcing the

1 start of a 45-day public comment period for the Draft Permit. A public meeting was held
2 at the Parlier Community Center on July 29, 2008. The DTSC did not receive oral
3 comments at the public meeting. The public comment period ended at 5:00 p.m. on
4 August 28, 2008. The DTSC received one comment letter from Mr. Philip Chandler,
5 dated August 28, 2008.

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

- 9 1. Response to Comments document dated December 17, 2008;
- 10 2. Memoranda dated December 17, 2008, from Mr. Alejandro Galdamez to the
11 File for San Joaquin Filter recycling, LLC, listing changes made by DTSC
12 from 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 draft to
15 final permit.

16
17 **C. PERMIT APPEAL PROCESS**

18 Pursuant to California Code of Regulations, title 22, section 66271.18(a), the
19 period for filing a petition for review (appeal) of this final Permit decision ended on
20 January 26, 2009. One petition for review was received on January 26, 2009, from
21 Mr. Philip Chandler. On January 29, 2009, the Permit Appeals Officer of the
22 Department of Toxic Substances Control (hereinafter referred to as "Department")
23 issued a letter to Mr. Randy Manser of San Joaquin Filter stating that pursuant to
24 California Code of Regulations, title 22, section 66271.14(b)(2), the entire Permit was
25 stayed until the Department completed its review of the appeal.

26 Pursuant to California Code of Regulations, title 22, section 66271.18(c), the
27 Department issued the "Order Partially Grant Reviewing Review, Denial of Review, and
28 Vacating Stay" (Docket No.: PAT-FY08/09-05), on May 5, 2009, granting review for 2 of

1 9 appeal comments. The Order also vacated the stay of all other provisions of the
2 Permit issued by DTSC on December 17, 2008, except Part VI paragraph 2. A public
3 notice was issued establishing a briefing schedule regarding the appeal comments that
4 were granted review. Interested persons were invited to submit written arguments
5 pertaining to the issues that were granted review and if necessary, request an Informal
6 Appeals Conference to present their arguments orally. The following phased briefing
7 schedule was established for this case:

- 9 • Petitioner and any other interested person supporting the position taken in
10 the appeal comments granted review ("Proponents") may file opening
11 briefs on or before June 2, 2009.
- 12 • The Permit Renewal Team of DTSC, and any other interested person
13 opposing the position taken in the appeal comments granted review,
14 ("Respondents") may file briefs responding to the Proponent's arguments
15 from June 6, 2009, to and including June 22, 2009.
- 16 • Finally, Proponents will have from June 26, 2009 to and including July 2,
17 2009, to file briefs responding to the Respondent's briefs.

18 No briefing argument was received from the Petitioner or any one else in support
19 of appeal comments that have been granted review during the first phase of the briefing
20 period ending on June 2, 2009.

21 During the second phase of the briefing period, DTSC submitted a brief dated
22 June 19, 2009. This brief was posted to DTSC's public website on June 19, 2009 and
23 delivered to the Petitioner by email on June 22, 2009. No briefing arguments
24 responding to DTSC's June 19, 2009, brief were received from the Petitioner or any one
25 else.

26 **IV. STANDARD OF REVIEW**

27 California Code of Regulations, title 22, section 66271.18(a), provides that any
28 person who filed comments, or participated in the public hearing on the draft Permit
during the public comment period, may petition the Department to review any condition

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

7 California Code of Regulations, title 22, section 66271.12, specifies the extent to
8 which issues are required to be raised during the public comment period for a draft
9 permit decision:

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

14 California Code of Regulations, title 22, sections 66271.18(a)(1) and (2) also
15 provide, in pertinent part, that:

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

- 20 (a) a finding of fact or conclusion of law which is clearly erroneous, or
21 (b) an exercise of discretion or an important policy consideration which the
22 Department should, in its discretion, review.

23 **V. DISCUSSION AND FINDINGS**

24 As previously stated, no interested person, except DTSC, submitted a briefing
25 argument regarding the appeal comments that were granted review. DTSC's brief
26 dated June 19, 2009 responds to Petitioner's original Appeal Comments 3 and 4. This
27 Order will evaluate the merits of the Appeal in the light of the Petition, applicable
28 authority, the DTSC briefing arguments, and the administrative record.

1 **Appeal Comment 3**

2 Petitioner's Appeal Comment 3 is reproduced from the petition as follows:

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

11 **DTSC Briefing Argument – June 19, 2009**

12 DTSC's briefing argument of Appeal Comment 3 is reproduced from the brief as
13 follows:

14 San Joaquin Filter Recycling submitted a Phase I Assessment to DTSC
15 on March 31, 1994 stating that no hazardous waste was released at the
16 Facility. DTSC approved the Phase I Assessment and issued a
17 Standardized Hazardous Waste Facility Permit to San Joaquin Filter
18 Recycling on December 23, 1997. Since DTSC determined that there was
19 no release of hazardous waste at or from the Facility, the 1997 permit did
20 not require San Joaquin Filter Recycling to conduct corrective action.

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

DTSC's Order granting review of Appeal Comment 3 further states: "The
administrative record, however, does not, on its face, contain documents
supporting DTSC's statement. For this reason, review of this comment is
granted." The Team disagrees with this statement. Pursuant to California
Code of Regulations, title 22, section 66271.17(e), the Team did not need
to physically include the Phase I Assessment and the inspection reports in
the Permit's administrative record because these documents were

1 referenced in the Fact Sheet dated July 2008 and DTSC's Response to
2 Comments. These documents were also readily available at DTSC in its
3 public record file.

4 **Response to Appeal Comment 3**

5 Petitioner failed to file arguments during the briefing period. California Code of
6 Regulations, title 22, section 66271.18, subsection (a)(1), requires the petitioner to show
7 that the condition in question is based upon a finding of fact or conclusion of law which
8 is clearly erroneous or an exercise of discretion or an important policy consideration
9 which the Department should, in its discretion, review. The Order dated May 5, 2009,
10 Docket No: PAT-FY08/09-05, and the Public Notice dated May 15, 2009, setting a
11 briefing schedule, clearly stated that any interested persons may file written arguments
12 concerning the issues that have been granted review in accordance with the prescribed
13 briefing schedule. The Order also stated:

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

27 Thus, although Petitioner was given sufficient opportunity, in two separate
28 phases of the briefing period, to submit all reasonably available arguments and factual
29 grounds supporting his position, he submitted nothing and has apparently elected to rely
30 on the general objections stated in the Petition.

31 On the other hand, DTSC argues in its brief that based on its review of the Phase
32 I for the facility and facility inspections, it determined that no corrective action was

1 necessary at the time the 2008 Permit was issued; therefore, there was no need to
2 include a corrective action schedule or other mechanism in the Permit.

3 Because Petitioner has failed to provide specific information, citations to the
4 record, or arguments to demonstrate that Part IV of the permit decision is not compliant
5 with applicable statutes and regulations, the Permit Appeals Officer denies Appeal
6 Comment 3.

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8 **Appeal Comment 4**

9 Petitioner's Appeal Comment 4 is reproduced from the petition as follows:

10
11 I hereby appeal the Corrective Action section of the Permit because the
12 AFR for corrective action is required by statute to be included in permits
13 issued by DTSC. Why isn't this addressed? Why isn't the AFR for
14 corrective action addressed in the corrective section of the permit? By its
15 silence on corrective action AFR, it is believed that this permit is
16 inconsistent with and contradictory to the intent of H&SC .25200.10(b).
17 This section of the H&SC requires that, ***When corrective action cannot
18 be completed prior to issuance of the permit, the permit shall contain
19 schedules of compliance for corrective action and assurances of
20 financial responsibility for completing the corrective action.*** [H&SC
21 .25200.10(b)] Title 22 states ***That the permit or order [emphasis
22 added] will contain schedules of compliance for such corrective
23 action (where such corrective action cannot be completed prior to
24 issuance of the permit) and assurances of financial responsibility for
25 completing such corrective action.*** [Title 22 CCR .66264.101(b)] In
26 perusing the consent agreement, it is clear that DTSC has not completely
27 addressed corrective action, since it only finished the RCRA Facility
28 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. *(Non-standard
characters in original)*

1 **DTSC Briefing Argument – June 19, 2009**

2 DTSC's briefing argument of Appeal Comment 4 is reproduced from the brief as
3 follows:

4
5 As stated in the Team's Argument regarding Appeal Comment 3, DTSC
6 determined that corrective action was not necessary at the San Joaquin
7 Filter Recycling facility at the time the Permit was issued. Therefore,
8 assurances for financial responsibility for corrective action were not
9 required for the purpose of the Permit. The Permit, however, provides that
10 in the event that corrective action is found to be necessary, San Joaquin
11 Filter Recycling is required to conduct corrective action pursuant to either
12 a Corrective Action Consent 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.

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

23 **Response to Appeal Comment 4**

24 This comment is directly related to Appeal Comment 3 and Appeal Comment 4 is
25 denied on the same basis as Appeal Comment 3; to wit, despite being provided with
26 several opportunities to do so, Petitioner has failed to provide specific information,
27 references to the record, or argument to demonstrate that Part IV of the permit decision
28 is not compliant with applicable statutes and regulations.

1 **VI. ORDER**

2 The Permit Appeals Officer finds that, with respect to Appeal Comments 3 and 4,
3 Petitioner Chandler has failed to provide sufficient facts or basis under the applicable
4 regulations that these comments should be granted. Therefore, Appeal Comments 3
5 and 4 are denied.

6 This Order constitutes the Department's final decision regarding this matter and
7 shall be effective as of this date. The stay of Part VI, paragraph 2 of the Permit issued
8 by DTSC on December 17, 2008, is hereby vacated and those provisions shall be fully
9 operative upon issuance of this Order.

10
11 DATED: August 31, 2009

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13 //original signed by//

14 _____
15 Mohinder S. Sandhu, P.E.
16 Permit Appeals Officer
17 Department of Toxic Substances Control
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