

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

4 IN THE MATTER OF: ) Docket Number: PAT-FY08/09-05  
5 )  
6 SAN JOAQUIN FILTER )  
7 RECYCLING, LLC ) DTSC PERMIT RENEWAL TEAM BRIEF  
8 14287 E. Manning Avenue ) RE: PETITION FOR REVIEW  
9 Parlier, California 93648 )  
10 EPA ID No. CAL 000102751 )  
11 ) California Code of Regulations  
12 ) Title 22, section 66271.18  
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12 **I. INTRODUCTION**

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14 This brief submits arguments on behalf of the Department of Toxic Substances  
15 Control (DTSC) Permit Renewal Team (the "Team"). On December 17, 2008, the Team  
16 issued a Standardized Hazardous Waste Facility Permit, Series C (Permit) to the San  
17 Joaquin Filter Recycling, LLC., ("San Joaquin Filter") for its hazardous waste storage  
18 and transfer facility located at 14287 E. Manning Avenue, Parlier, California (Facility).  
19 On January 26, 2009, Mr. Philip Chandler (Petitioner) filed a Petition to Review (Appeal)  
20 the Team's final permit decision. On May 5, 2009, DTSC issued an Order denying the  
21 Petitioner's petition for review of Appeal Comments 1, 2, and 5 through 9, and granting  
22 review of Appeal Comments 3 and 4 which assert that the Permit does not satisfy the  
23 corrective action requirements of State law and regulations. DTSC subsequently  
24 announced a briefing period to receive arguments concerning Appeal Comments 3 and  
25 4.

26 **II. APPEAL COMMENTS AND TEAM'S ARGUMENTS**

27 The following are the Team's arguments regarding Appeal Comment 3 and  
28 Appeal Comment 4:

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1           **A. Appeal Comment 3:**

2           **Petitioner's Appeal Comment:**

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

9           **Team's Argument:**

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

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

25          DTSC's Order granting review of Appeal Comment 3 further states: "The  
26 administrative record, however, does not, on its face, contain documents supporting  
27 DTSC's statement. For this reason, review of this comment is granted." The Team  
28 disagrees with this statement. Pursuant to California Code of Regulations, title 22,

1 section 66271.17(e), the Team did not need to physically include the Phase I  
2 Assessment and the inspection reports in the Permit's administrative record because  
3 these documents were referenced in the Fact Sheet dated July 2008 and DTSC's  
4 Response to Comments. These documents were also readily available at DTSC in its  
5 public record file.

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7 **B. Appeal Comment 4:**

8 **Petitioner's Appeal Comment:**

9 I hereby appeal the Corrective Action section of the Permit because the AFR for  
10 corrective action is required by statute to be included in permits issued by DTSC. Why  
11 isn't this addressed? Why isn't the AFR for corrective action addressed in the corrective  
12 section of the permit? By its silence of corrective action AFR, it is believed that this  
13 permit is inconsistent with and contradictory to the intent of H&SC 25200.10(b). This  
14 section of the H&SC requires that, 'When corrective action cannot be completed prior to  
15 issuance of the permit, the permit shall contain schedules of compliance for corrective  
16 action and assurances of financial responsibility for completing corrective action.'  
17 [H&SC 25200.10(b)] Title 22 states 'That the permit or order [emphasis added] will  
18 contain schedules of compliance for such corrective action (where such corrective  
19 action cannot be completed prior to issuance of the permit) and assurances of financial  
20 responsibility for completing such corrective action' [Title 22 CCR 66264.101(b)] In  
21 perusing the consent agreement, it is clear that DTSC has not completely addressed  
22 corrective action, since it only finished the RCRA Facility Assessment (RFA) in May  
23 2004, [for a facility that had operated over 20 years] just before issuance of the draft  
24 permit but has failed to require corrective action AFR in the permit. Moreover, there  
25 appears to be no schedule of compliance for completion of corrective action in the  
26 permit proper. Note, that no reference is made in the Permit as to whether DTSC has  
27 determined that corrective action is complete---either through implementation of a  
28 remedy selected. DTSC is attempting to end run its obligation to make a clear

1 administrative decision----subject to public comment and CEQA---on the issue of  
2 corrective action.”

3 **Team’s Argument:**

4 As stated in the Team’s Argument regarding Appeal Comment 3, DTSC  
5 determined that corrective action was not necessary at the San Joaquin Filter Recycling  
6 facility at the time the Permit was issued . Therefore, assurances for financial  
7 responsibility for corrective action were not required for the purpose of the Permit. The  
8 Permit, however, provides that in the event that corrective action is found to be  
9 necessary, San Joaquin Filter Recycling is required to conduct corrective action  
10 pursuant to either a Corrective Action Consent Agreement or an Enforcement Order for  
11 Corrective Action issued by DTSC pursuant to Health and Safety Code sections 25187  
12 and 25200.10. In that case, the Corrective Action Consent Agreement or the  
13 Enforcement Order for Corrective Action would include a requirement for assurances for  
14 financial responsibility.

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

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1 **III. CONCLUSION**

2 For the reasons discussed above, the Team requests that Appeal Comment 3  
3 and Appeal Comment 4 be denied.

4 DATED: June 19, 2009

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6 Alejandro Galdamez  
7 Permit Renewal Team  
8 Department of Toxic Substances Control  
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