



Matthew Rodriguez
Secretary for
Environmental Protection



Department of Toxic Substances Control

Miriam Barcellona Ingenito
Acting Director
1001 "I" Street
P.O. Box 806
Sacramento, California 95812-0806



Edmund G. Brown Jr.
Governor

October 3, 2014

Mr. Jon L. Bennett, Jr., President
Filter Recycling Services, Inc.
180 West Monte Avenue
Bloomington, California 92316-2947

**REQUEST FOR VACATION OF STAY IN MATTER OF APPEAL OF PERMIT
MODIFICATION DECISION FOR FILTER RECYCLING SERVICES, INC., RIALTO, SAN
BERNARDINO COUNTY, CALIFORNIA, EPA ID. NO. CAD982444481**

Dear Mr. Bennett:

Filter Recycling Services' Opening Brief on Appeal of Permit Modification Conditions (Opening Brief), submitted on September 17, 2014, to the Department of Toxic Substances Control (DTSC or *Department*) suggests that the five (5) contested permit conditions granted review are severable from the requested permit modifications and therefore the stay of the uncontested conditions of the permit modification decision should be vacated. This letter provides an explanation of DTSC's decision to stay the entire permit modification DTSC issued on April 21, 2014 (in the Order to Set Briefing Period for Petition for Review (Order), dated August 25, 2014) and also responds to question # 1) "Why are the conditions not severable?" in Mr. Wade Riddering's September 2, 2014 email to Mr. Paul Ruffin.

The applicable requirements for stays of uncontested permit conditions are provided in California Code of Regulations, title 22, section 66271.15. Subsection (a)(2) states:

"Uncontested conditions which are not severable from those contested shall be stayed together with the contested conditions. Stayed provisions of permits for existing facilities shall be identified by the Department. All other provisions of the permit for the existing facility shall remain fully effective and enforceable."

Subsection (c) provides:

"Any facility of activity holding an existing permit shall:

- (1) comply with the conditions of that permit during any modification or revocation and reissuance proceeding under section 66271.4; and
- (2) to the extent conditions of any new permit are stayed under this section, comply with the conditions of the existing permit which correspond to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed."

Mr. Jon L. Bennett, Jr., President
October 3, 2014
Page 2

Comment 4 of the Order corresponds to Sections III.4 and III.5 of the petition for review, dated May 27, 2014, from Ms. Deborah Perlman and Mr. Wade Riddering and contests DTSC's interpretation of authorized wastestreams as provided in condition II.15 and Table 1 of the modified permit. Permit condition II.15 says:

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

The requested new wastestreams are authorized by contested condition II.15 and contested Table 1, and are stayed pursuant to California Code of Regulation, title 22, subsection 66271.15(a)(1) [in part]:

"If a request for review of a permit is granted, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial review pending final Department action. ..."

The existing permit has a permit condition (II.15) corresponding to stayed modified permit condition II.15, but does not have a corresponding Table 1. The existing permit has different designations for the wastestreams, which are not defined in the existing permit.

In Part III of the modified permit, each of the hazardous waste management units have lists of "Permitted Waste Streams" and "Common Name of Waste" that use wastestream numbers and names defined in contested Table 1 and authorized pursuant to contested condition II.15 to be managed at that unit. Therefore, the operations of the hazardous waste management units pursuant to Part III of the modified permit are not severable from the contested condition II.15 and contested Table 1 and must be stayed. This includes the modified permit changes for consolidation of two storage units, addition of Unit #11, and truck-to-truck transfer. The existing permit has a corresponding Part III, which authorizes operation of the existing hazardous waste management units with the wastestreams authorized in the existing permit.

Comment 1 of the Order corresponds to Section III.1 of the petition for review and contests the authorized location of containers (including transport vehicles) specified in modified permit condition II.14:

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

The Activity Descriptions in Part III for Units #9 and #11 for truck-to-truck transfer of ignitable or reactive wastes are not severable from contested modified permit condition II.14 and must be stayed because permit condition II.14 restricts the locations for such truck-to-truck transfers to the Ignitable Waste Storage Area (IWSA). The existing permit has a permit condition (II.14) corresponding to stayed modified permit condition II.14, which restricts the location for storage of ignitable or reactive waste. However, the size of the IWSA shown on Attachment 1, Facility Plot Plan, of the existing permit is smaller than the size of the IWSA shown on Figure 2, Permitted Units at Filter Recycling Services, Inc., in the modified permit.

Comment 3 of the Order corresponds to Section III.3 of the petition for review and contests the prohibition on treatment of used oil and oily wastewaters specified in modified permit condition II.18:

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

The Activity Description in Part III for Unit #9, Waste Storage (Exterior) (S2), is not severable from contested modified permit condition II.18 and must be stayed because the Activity Description includes the sentence:

"... The liquid wastes pass through a filter and, after gravity separation, the waste streams are vacuumed into a tanker truck for management at off-site facilities. ..."

The existing permit has an Activity Description in Part III for the unit Waste Storage (Exterior) (S2) which corresponds to Activity Description in Part III for Unit #9, but does not include treatment by gravity separation. The existing permit has a condition (II.18) corresponding to stayed contested modified permit condition II.18; these conditions are identical.

Comment 5 of the Order corresponds to Section III.6 of the petition for review and contests the restriction that solid hazardous waste transfer is directly from one container into another container in modified permit condition Part III, Unit #9, 12:

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

The Activity Description in Part III for Unit #9, Waste Storage (Exterior) (S2), is not severable from contested modified permit condition Part III, Unit #9, 12 and must be stayed because the Activity Description includes the description:

“... Three solid debris roll-off bins are located in this Unit and each bin is used to consolidate a specific type of waste, such as metal scrap, contaminated soil, solid paint related debris, oil related debris, and miscellaneous solid waste. Solid hazardous wastes are received at FRS and off-loaded into consolidated bins in the receiving/shipping area for inspection and sorting. ...”

The existing permit does not have a restrictive condition corresponding to stayed contested modified permit condition Part III, Unit #9, 12. The existing permit has an Activity Description in Part III for the unit Waste Storage (Exterior) (S2) which does not include descriptions of off-loading solid hazardous wastes into consolidated bins.

Although it was not contested in the petition for review, the modified permit has condition Part III, Unit #11, 11, which is substantially the same as contested modified permit condition Part III, Unit #9, 12.

Comment 2 of the Order corresponds to Section III.2 of the petition for review and contests modified permit condition Part III, Unit #1, 1:

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

The existing permit does not have a restrictive condition corresponding to stayed contested modified permit condition Part III, Unit #1, 1. The requested permit changes are severable from this stayed contested modified permit condition.

The requested permit change to allow cubic yard boxes and liquid totes to be stacked no more than two high is in modified permit condition II.12:

The Permittee shall not stack: 5-gallon containers more than five (5) containers high; 20 gallon containers more than three (3) containers high; 30 gallon containers more than (3) containers high; or 55-gallons drums more than two (2) drums high within Unit # 8 through #11. Cubic yard boxes and liquid totes shall not be stacked more than 2 high. All other containers shall not be stacked.

The permit change to add stacking of cubic yard boxes and liquid totes is severable from the stayed contested modified permit conditions, except for boxes and totes containing wastestreams in stayed contested modified permit condition II.15 and Table 1 or located in added Unit #11 in stayed un-severable modified permit condition Part III as discussed above.

Mr. Jon L. Bennett, Jr., President
October 3, 2014
Page 5

During the appeal of a modified permit, it is important for the permittee and DTSC to understand how facility is authorized to operate with the un-stayed conditions of the modified permit and the conditions of the existing permit, which correspond to the stayed conditions. Considering the extent to which the conditions of the modified permit were stayed, DTSC decided in the Order that it would be more understandable to the permittee and DTSC to stay the entire modified permit so that the facility could continue operation under the existing permit during the relatively short period to resolve the appeal.

If you have any questions concerning this letter, please contact Mr. Paul Ruffin at (916) 255-6677 or email appeals@dtsc.ca.gov.

Sincerely,

 // original signed by //

Pauline Batarseh
Permit Appeals Officer

cc: See next page..

Mr. Jon L. Bennett, Jr., President
October 3, 2014
Page 6

cc List Sent Via Email

Ms. Deborah Perlman
Perlman Law, Inc.
433 North Camden Drive, Suite 970
Beverly Hills, California 90210
deborah@perlmanlawoffices.com

Mr. Wade Riddering, REPA
Environmental Regulatory Compliance, LLC
1773 Mesa Verde Drive
San Bernardino, California 92404
wade@erc-llc.us

Ms. Erika Giorgi
Senior Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806
Erika.Giorgi@dtsc.ca.gov

Mr. Robert Sullivan
Senior Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806
Robert.Sullivan@dtsc.ca.gov

Ms. Debra Schwartz
Senior Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, California 91311
Debra.Schwartz@dtsc.ca.gov

Mr. Paul Ruffin, P.E.
Hazardous Substances Engineer
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California
appeals@dtsc.ca.gov

Mr. Roberto Kou, Chief
Chatsworth Enforcement Branch
Enforcement and Emergency Response Division
Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, California 91311
Roberto.Kou@dtsc.ca.gov

Mr. Paul Baranich
Enforcement and Emergency Response Division
Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, California 91311
Paul.Baranich@dtsc.ca.gov

Mr. Rick Jones
Enforcement and Emergency Response Division
Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, California 91311
Rick.Jones@dtsc.ca.gov

Mr. Edward Nieto, P.E.
Office of Permitting
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200
Edward.Nieto@dtsc.ca.gov

Mr. Alfred Wong, P.E.
Office of Permitting
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, California 94710
Alfred.Wong@dtsc.ca.gov

Mr. Waqar Ahmad, Ph.D., P.E.
Office of Permitting
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, California 94710
Waqar.Ahmad@dtsc.ca.gov